A

DIGEST

OF

THE CRIMINAL LAW

OF THE

PRESIDENCY OF FORT WILLIAM,

AND

GUIDE

TO

ALL CRIMINAL AUTHORITIES

THEREIN.

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ERRATA.

Page.	*Paragraph.*	
19,	55,	*For* page 89 *read* page 189.
ib.	59,	*Add Ced. Prov.* Reg. VII. 1803, sect. 23, and Reg. VIII. 1803, sect. 9.
44,	178,	*For* page 110 *read* pages 101 and 218.
70,	350,	Marginal note. *For* C. No. 12 *read* A. No. 14.
73,	375,	*For* taken *read* taking.
90,	465,	Line 6. *For* 325 *read* 337.
94,	476,	*For* Reg. XIV. 1795, *read* Reg. XVI. 1795.
101,	523, 525, 526,	*For* 24 Geo. III. *read* 21 Geo. III.
ib	527,	*For* alone *read* done.
122,	637,	*Dele* the concluding portion of this paragraph under the rule of sect 4, Act I. 1848. *See para.* 3281*a*.
ib.	641,	Line 2. *Dele* or forgery. *And so in the marginal note.*
143,	771,	*For* cl. 2 *read* cl. 10.
179,	982,	Marginal note. *For* receipts and petitions *read* receipt of petitions.
183,	1003,	Marginal note. *For* 1018 *read* 1013.
338,	1868,	Line 7. *For* servant *read* person.
340,	1876,	*For* No. 16 of Appendix C *read* No. 3 of Appendix B.
350,	1941,	*For* 1807 *read* 1817.
410,	2289,	Line 9. *For* vol. 1. *read* vol. 2.
429,	2391,	*For* half-yearly *read* annual.
433,	2416,	*For* cl. 3 *read* cl. 5.
488,	2680,	*For* 1812 *read* 1821.
555,	2931,	Last precedent but one quoted. *For* where the prisoner concealed a murder perpetrated by his wife, *read* where the prisoner endeavoured to conceal a murder perpetrated by his wife by obstructing the police officers in their search for the body. *And for* page 107 *read* page 137.
564,	2951,	*For* Act XXIV. 1843 *read* Act XIV. 1844.
565,	2957,	*For* para. 2953 *read* para. 2950.
625,	3164,	*For* ⊔ *read* or.
655,	3276,	Marginal note. *For* para. 3284 *read* para. 3319*a*.
698,	3441, 3443,	Transpose the marginal notes.
702,	3460,	Marginal note. *For* performing *read* preferring.
792, App. D. 1, 805, App. E. 1, 822, App. F. 1, 825, App. F. 5,		Col. 1. *After heading* 34 *insert* 35. Incendiarism, *and alter all the subsequent numbers.*
794, App. D. 6, 810, App. E. 11, 822, App. F. 1,		*For* Detail of heading 41 *read* detail of heading 42.

Page.	
805, App. E. 1,	Cols. 3, 4, and 5. *For* paras. 3 to 5 *read* para. 14.
896, Index ..	Col 2nd, line 27. *For* 1729 *read* 1730.
898, ...	Col. 2nd, line 5 from bottom. *For* or person *read* a person
901, ...	Col. 2nd, line 29. *For* 1773 *read* 1774.
913, ...	Col. 1st, line 24. *For* Penal *read* Parol.
915, .	Col. 1st, line 33 *For* or unless the judge *read* or in the case of an attempt unless the judge.
916, .. .	Col. 2nd, line 3. *Dele* offences against Government.
918, ...	Col. 2nd, line 25 from bottom. *For* imprisonment *read* imprisonment for life.

ADDENDA.

Nature of crimes.—*Page* 22.

71*a*. The sessions court, unassisted by a Mahomedan law-officer, is incompetent to declare that to be a crime which is not so declared by the regulations. The law professedly administered is the Mahomedan law, amended and modified by the regulations. When the amendments are applicable, there can be no difficulty in disposing of trials; but, in the contrary event, an exposition of the Mahomedan law is necessary to pronounce whether the act of the prisoner is punishable or otherwise. C. O. No. 55 of vol. 3.

What is a punishable offence.

Persons capable of committing crimes.—*Page* 30.

Insane Persons.—*Page* 695.

99*a*. No person, who does an act which, if done by a person of sound mind, is an offence, is to be acquitted of such offence for unsoundness of mind, unless the court or jury, as the case may be, in which, according to the constitution of the court, the power of conviction or acquittal is vested, finds that, by reason of unsoundness of mind, not wilfully caused by himself, he was unconscious, and incapable of knowing, at the time of doing the said act, that he was doing an act forbidden by the law of the land. Act IV. 1849, sect. 1.

Accused persons are not to be acquitted for unsoundness of mind, unless it is shown that they were incapable of knowing, at the time of doing the act, that they were doing an act forbidden by law.

99*b*. Whenever a person charged with any offence is acquitted, because he is within the exception made by the foregoing section, the court or jury is to give a special judgment or verdict, that he did the act charged against him, being then of unsound mind, so as to excuse him according to law. Act IV. 1849, sect. 2.

Special judgment to be given in such cases.

99*c*. Whenever such special judgment or verdict, as aforesaid, has been given against any person, the court, before which the trial was had, is to order him to be kept in strict custody for such time and in such manner as to the government seems fit. Act IV. 1849, sect. 3.

And the prisoner is to be confined under the pleasure of government.

99*d*. In all cases in which, before the passing of this Act, any person has been acquitted of any offence on the ground of insanity, lunacy, idiocy, or unsoundness of mind, such person may be kept in the same strict custody, in which persons may be kept, who shall be hereafter acquitted for unsoundness of mind. Act IV. 1849, sect. 4.

These rules apply to persons confined, after an acquittal on the ground of insanity, before the passing of the Act.

99*e*. No person, against whom any such special judgment or verdict has been given, is to be entitled to be discharged out of custody on being restored to soundness of mind, unless by order and at the discretion of government. Act IV. 1849, sect. 5.

No person in such predicament can be discharged without the order of government.

99*f*. Whenever it appears to the government that any person, imprisoned by the sentence of any court, is of unsound mind, the government by a warrant, which is to set forth the grounds of belief that such prisoner is of unsound mind, may order the removal of such prisoner to a lunatic asylum, or other fit place of safe custody, there to be kept and treated as the government shall order; and, when it appears to government that such prisoner has become of sound mind, the

If a person undergoing a sentence of imprisonment becomes of unsound mind.

government by a warrant directed to the person having charge of him is to remand such prisoner to the prison from which he was removed, if then still liable to be kept in custody, or, if not, is to order him to be discharged out of custody. Act IV. 1849, sect. 6.

99*g*. The word government in this Act is to be taken to mean the governor, or governor in council, or other person or persons administering the government of the presidency or place where the trial is had. Act IV. 1849, sect. 7.

Meaning of the term "government."

101*a*. The nizamut adawlut upon the report of the session judge, cancelled the sentence passed by the latter upon a prisoner, whose insanity at the time of committing the offence, of which he was convicted, was established subsequently to conviction. N. A. R. vol. 6, page 80.

Precedent.

3429*a*. Applications for the liberation of persons convicted of having committed penal acts while laboring under insanity, and directed to be kept in confinement until their restoration to reason, are invariably to be accompanied by a medical history of the prisoner's case from its coming under the notice of the local medical authority, of its peculiar features, together with an account of the patient's mental variations, his improvements, relapses, and final recovery, and a specification of the period during which he may have remained free from any return of the malady, or of symptoms denoting its approach. Unless this history be in every respect satisfactory and conclusive as to the restoration of the prisoner to a state of sanity likely to be permanent, the application must, for the sake of public safety, be disallowed. Magistrates should require the civil surgeon, or other medical officer having charge of the prison or the lunatic asylum, in case of his removal, to put on record a professional history of the nature described respecting each prisoner laboring under mental derangement, in order that the object proposed by this order may not be frustrated by mutations of incumbency in the situation of civil surgeon. C. O. No. 221 of vol. 3.

Applications for the release of recovered insanes, are to be accompanied by medical history of the case.

Civil surgeon to keep on record such a professional history

3429*b*. The permission of government must be obtained for the removal to the insane hospital of a prisoner, who has become insane while under sentence. N. A. R. vol. 6, page 80.

Persons capable of committing crimes: Husband and wife.—*Page* 33.

118*a*. A husband and wife should not be indicted jointly as receivers of stolen property found in their house, unless it be in evidence that the latter acted independently, and not under the influence of her husband. N. A. R. vol. 1, page 353; and vol. 6, page 92.

Liability of wife conjointly with husband.

Principals and accessaries.—*Page* 37.

132*a*. The act which constitutes what is called "privity" in this country corresponds with "misprision of felony" in English law, viz. the concealment or the procuring the concealment of a felony which a man knows but never assented to, or the observing silently the commission of a felony without using any endeavours to apprehend the offender; it is therefore strictly an offence of a negative kind consisting in the concealment of something that ought to be revealed. Accessaryship, on the other hand, is an offence of a positive kind, and of a higher degree of criminality, implying an active participation, either by procuring, counselling, commanding, or abetting another to commit a felony, or, with a knowledge that a felony has been committed by another, by receiving, relieving, comforting, or assisting the felon. The distinction between the two offences is marked: the one is a misdemeanor in English law, the other is a felony: the one is in its kind negative, requiring nothing but silent passive acquiescence in the commission of a felony to constitute it; the other is a positive participation in the commission of a felony, either by counsel and command before the fact, or by relief and assistance given to the felon after the fact. In

Explanation of privity; and the distinction between being privy, and being accessary to a crime.

selecting the following corresponding terms in the vernacular for these offences, the court have had regard to the fact that, as either the constructive or actual presence of the accused at the time when the crime is committed is necessary to constitute complicity on his part, so the absence of the accused is essential to the charge of being an "accessary;" or, in other words, he who is present aiding and abetting in the commission of a felony may be an accomplice or a principal, but he cannot in the legal sense of the words be either accessary or privy to its commission.

Terms to be used in the vernacular.

Accomplice, ...	شریک بوقت وقوع جرم	(সঙ্গি)
Accessary before the fact,.. ...	شریک ماقبل وقوع جرم	(অপরাধের পুর্ব্ব সহকারি)
Accessary after the fact, ...	شریک مابعد وقوع جرم	(অপরাধের পর সহকারি)
Accessary before and after the fact, ...	شریک ماقبل اور مابعد وقوع جرم	(অপরাধের পুর্ব্ব ও পর সহকারি)
Privity, ...	... ... راز داري	(জ্ঞাতসারিতা)
Aiding and abetting, ...	... ... اعانت	(সহায়তা)

C. O. No. 8 of vol. 4.

Jurisdiction—foreign territories.—*Page* 42.

Note.—Paras. 165 to 171, 173 and 174 are rescinded, and the following provisions substituted by Act I. 1849.

What classes of persons are amenable to the law for offences committed in foreign territories.

165. All subjects of the British government; and also all persons in the civil or military service of the said government, while actually in such service, and for 6 months afterwards; and also all persons who have dwelt for 6 months within the British territories under the government of the East India Company, subject to the laws of the said territories, who shall be apprehended within the said territories, or delivered into the custody of a magistrate within the said territories wherever apprehended; are to be amenable to the law for all offences committed by them within the territory of any foreign prince or state; and may be bailed or committed for trial, as hereafter provided, on the like evidence as would warrant their being held to bail or committed for the same offence, if it had been committed within the British territories. Act I. 1849, sect. 2.

Every such case to be reported to government before trial.

165*a*. The committing magistrate immediately, and before the trial, is to report every such case to the government, and is to obey the orders which he shall receive thereon. Act I. 1849, sect. 3.

Government may order the trial to be had before one of the established courts.

165*b*. The government may order the trial to be had before one of the established courts of criminal judicature, which would be competent to try the person charged for the offence, if it had been committed within the British territories. Act I. 1849, sect. 4.

If in such territory there is a competent court administered under the Company's government, the government may order the prisoner to be delivered to such court.

165*c*. When the offence is charged to have been committed in the territory of any foreign prince or state, administered by officers acting under the authority of the East India Company, in which territory a court competent to try the person charged for the offence is established by authority of the governor-general of India in council, the government may order such person to be conveyed in custody out of the British territories for the purpose of delivering him up for trial before such court. Act I. 1849, sect. 5.

Forms of warrant and bail-bond to contain conditions regarding the orders of government.

165*d*. When the person charged is committed, the form of warrant is to specify the commitment to be until the orders of government can be received and acted on; when he is bailed, the form of the bail-bond is to be, in the first instance, to appear before the magistrate on a certain day assigned, allowing reasonable time for receipt of the orders of government, and on such

subsequent days as the magistrate from time to time shall require; and if government orders the person charged to be tried within that presidency, the magistrate may cause the bail-bond to be renewed in the usual form to appear and take his trial at the court appointed for the purpose. Act I. 1849, sect. 6.

165*e*. In either case the special order of government is to be deemed full authority, either for the trial and punishment of the person charged within the British territories, or for conveying him in custody out of the British territories as aforesaid. Act I. 1849, sect. 7.

The special order of government is sufficient authority for the trial.

165*f*. The word "government" as used in the third and following sections of this Act, means the governor or governor in council, or other person or persons having supreme executive authority in the presidency or place to which the committing magistrate belongs. Act I. 1849, sect. 8.

Meaning of the term "government"

165*g*. The authority hereinbefore given to the government may be also exercised by any commissioner or other person acting in the civil service of the East India Company, to whom the governor general in council shall have delegated authority to receive reports and give orders in cases within this Act. Act I. 1849, sect. 9.

The authority of government may be delegated to a commissioner.

183*a*. The rule that the proceedings on a trial for an offence committed in a foreign territory must be quashed unless the permission of government to bring the accused to trial has been obtained, is applicable to the extra-regulation provinces. N. A. R. vol. 6, page 79.

A trial cannot be held in the extra-regulation provinces for an offence committed in a foreign state without the sanction of government.

Complaints.—*Page* 53.

235*a*. The provisions of sect. 4, Reg. IX. 1807 expressly authorize the issue of a warrant to apprehend persons charged with serious offences upon credible information without a written complaint or depositions on oath. N. A. R. vol. 1, page 277.—For form of warrant to be used in such cases, see Appendix A. 22½. C. O. No. 5, April 7, 1849.

Warrant may be issued on credible information.

Witnesses.—*Page* 69.

341*a*. In modification of cl. 1, sect. 2, Reg. III. 1812, it is enacted that it is lawful for the magistrates to regulate the amount of diet-money required for witnesses in petty cases, with reference to the probable period such witnesses may have to be in attendance; and in the event of prolonged detention of witnesses to direct the deposit of any further sum which to the said magistrates may seem requisite. Act VII. 1846.

Magistrate may regulate the amount of diet-money to be deposited before taking out process.

Oaths.—*Page* 72.

367*a*. The words, in sect. 4, Act V. 1840, "Her Majesty's courts of justice" are not to be deemed to mean or extend to the courts of the justices of the peace. Act II. 1847.

Justices of peace are to administer oaths according to Act V. 1840.

Evidence.—*Page* 75.

386*a*. Witnesses for the defence, like other witnesses, should be examined on the points to which they are summoned to testify, and cross-examined regarding statements made by them in answer to the prisoner's questions, if their statements appear to require it; and their personal knowledge of the circumstances which they are cited to prove should be closely scrutinized. C. O. No. 2 of vol. 4.

Examination of witnesses for the defence.

387*a*. A witness accused of having given a false deposition on oath cannot be examined on oath as to the truth of such accusation, and then committed for giving false and contradictory statements; his defence should be taken without oath on a charge of perjury. N. A. R. vol. 6, page 91.

Witness accused of perjury should be examined on the charge without oath

Confessions.—*Page* 89.

457*a*. Police officers bringing in witnesses or defendants should not be allowed to remain in attendance at the cutcherry, until the examinations of such persons have been taken, as their object is frequently to see that the witnesses tell the story put into their mouths in the mofussil. C. O. Sup. Pol. L. P., No. 10 of 1846.

Police officers not to be allowed to be present during the examination

Magistrate.—Liability.—*Page* 101.

526*a*. On the institution of any action against an officer of government for acts done in the discharge of his public duty, he is to communicate the fact through the usual official channel, reporting all circumstances which may be necessary to enable the government to arrive at a decision on the real merits of the case. If, on full examination into the case, and on a fair and reasonable interpretation of his proceedings, the officer appears to have acted rightly, he will be directed to take the necessary steps to defend himself, government advancing the funds necessary for that purpose, to be refunded after the issue of the action is known in case the circumstances then brought to light should prove the officer to have acted improperly. If, on the other hand, upon examination of his case by the government his conduct appears to have been clearly wrong, he will be informed that the government will not interfere, and that he must defend himself at his own charge. C. O. S. D. A., No. 11, May 12, 1848. C. O. Sup. Pol. L. P., No. 5 of 1848.

How far government will advance the expenses of actions brought against officers for acts done in the discharge of public duties.

Assistant to the Magistrate.—*Page* 109.

568*a*. Applications made to session judges by magistrates with a view to their assistants being invested with special powers or the powers of a joint-magistrate are to be submitted by the session judges to the government direct. C. O. No. 11 of vol. 4.

Applications for increased powers to be made to government direct.

Deputy Magistrate.—*Page* 112.

590*a*. Deputy magistrates in charge of sub-divisions are allowed a travelling allowance of three rupees per diem whilst moving about their jurisdiction. Those residing at sudder stations, and drawing an allowance of 200 rupees per mensem, are allowed five rupees a day when deputed to the interior on duty. C. O. Sup. Pol., No. 7 of 1847.

Travelling allowances.

590*b*. Deputy magistrates, located upon full salaries in the mofussil, are expected to pay the expenses of cart-hire for conveying their tents, records, &c. out of their own allowances. Govt. Bengal to Sup. Pol. L. P., No. 1184, June 3, 1846.

Cost of moving records, tents, &c.

Sub-divisions.—*Page* 117.

609*a*. The words "and dispose of all cases occurring in their jurisdiction and within their competence to decide"—were inserted in rule 19 without due advertence to the wording of cl.

3, sect. 2, Reg. III. 1821, under which assistants exercising the powers there described are competent to decide only cases referred to them. Govt. Bengal, No. 379, February 24, 1847.

Commitments.—*Page* 123.

643*a*. A commitment must contain a charge of a substantive offence: a person cannot be committed on a charge of bad character. N. A. R. vol. 6, page 76.

Commitment must contain charge of a substantive offence.

647*a*. The magistrate cannot punish the accessary and commit the principal; in all possible cases they should be tried together, if it be only lest the accessary be punished, and the principal acquitted. N. A. R. vol. 2, page 220.

Magistrate cannot punish the accessary and commit the principal.

647*b*. When a prisoner is committed, because the commitment of another prisoner implicated in the same offence is requisite under the regulations, the circumstance necessitating commitment must be noted in the roobakaree of commitment; and the session judge should be careful that it is so recorded, because, when but for the commitment of his accomplices the magistrate would have sentenced a prisoner, the judge should refrain from awarding to him a greater measure of punishment than the magistrate has authority to impose for offences of the kind. The judge also must himself show in his remarks under what circumstances the sentence recorded has been adjudged. C. O. No. 234 of vol. 3.

If prisoners who might be sentenced by the magistrate are committed because others implicated in the same case must be committed, the reason must be noted by the magistrate and the judge.

654*a*. A prisoner under commitment on a charge of wilful murder effected his escape. His commitment (on re-apprehension) on an additional charge of escaping from jail whilst awaiting his trial at the sessions, which was an act not arising out of the same circumstances as the original count, and one in which commitment was not necessary, was annulled. N. A. R. vol. 6, page 75.

Additional count for escape from hajut cannot be added to charge for original offence.

661*a*. The separate paper containing the charges in English and the vernacular, prescribed by para. 16, C. O. No. 54 of vol. 2, is to be drawn up and signed by the civil judge, when he makes a commitment for perjury brought to light in the course of any civil proceeding. C. O. No. 4 of vol. 4.

When a civil judge commits for perjury, he is to draw up and sign the separate paper of charges.

667*a*. As a knowledge of the grounds which have led to the apprehension of the prisoners, is in many cases essential to enable the court to come to a correct conclusion as to the guilt or innocence of the accused, magistrates and other committing officers are to state in the calendar the circumstances which first induced suspicion to attach to the prisoners, and ultimately caused their apprehension on the charge of committing the offence for which they have been put on their trial. C. O. No. 2, June 9, 1848.

The circumstances first inducing suspicion against the prisoners are to be noted in the calendar.

693*a*. The authority of session judges to annul commitments is not affected by Act XXXI. 1841. As regards the question under what circumstances the power may be exercised, the court refers to Const. Nos. 782* and 1122†, the former of which declares that the commitment may be cancelled in a case of which the magistrate has power to dispose; and the latter rules that a commitment cannot be cancelled merely on the ground of the evidence shown in the calendar appearing insufficient for conviction. In cases in which the magistrate is at liberty to exercise his discretion in bringing the accused to trial in the sessions court,‡ the session judge cannot cancel the commitment because he differs in regard to the tribunal before which the case should be brought; but the special reasons inducing commitment should be assigned by the magistrate, otherwise it will be liable to annulment. With regard to the alteration of charges by session judges, the court direct them to abstain from having them modified merely because the case involves a higher offence or a different one from that charged. In the trial of a case a session judge exercises only judicial functions, and has nothing to do with the framing of the charges on

How far the session judges have power to annul commitments, and to cause the charges to be altered and errors rectified.

* *v. para.* 697

† *v. para.* 694.

‡ *C. O. Nos.* 53 *and* 102 *of vol.* 3 *(v. para.* 650*).*

which the prisoners are committed. If the evidence will not sustain the particular charge of which a prisoner is accused, it is his obvious duty to acquit him; and it will rest with the magistrate to re-commit him on an altered charge; which he is not debarred from doing, if in consequence only of the erroneous framing of the original one a prisoner be acquitted, since the offences in the two indictments cannot be said to be the same. There are various circular orders* which prescribe rules for the proper framing of charges, due attention to which on the part of the magisterial authorities should prevent the occurrence of errors. Some of these circulars contain instructions for the form in which charges are to be drawn up; while others direct the adoption of a particular course according to the character of the offence; and session judges are directed by some of them, and generally by para. 2, C. O. No. 135 of vol. 2,† to cause the magistrates to rectify errors or to supply omissions, the existence of which may be apparent on taking up a trial. Such portions of the above circular orders, however, as permit the session judges to have the charges altered, must be considered as now inapplicable, when such alterations may lead to a change in the character of the offence. Thus, *e. g.* where a prisoner is only accused of culpable homicide, when the charge of murder might be substantiated against him; or by neglect of the rule to insert the second count prescribed by C. O. No. 98 of vol. 2, is likely to escape altogether from a conviction not ensuing on a charge of burglary or theft; the session judge is no longer competent to have the error repaired; he must proceed with the trial and pronounce upon the prisoner's guilt or innocence of the particular crime of which he has been arraigned. But it is not forbidden him to cause the rectifying of any mere irregularity in respect of a commitment, *e. g.* in any instance of a disregard of the rule of C. O. No. 10 of vol. 4, for the framing of charges of perjury, or of neglect of a prescribed form, observance of it may still be required at the commencement of the proceedings. C. O. No. 4, July 7, 1848.

* *C. O. No.* 54 *of vol.* 2, *paras.* 15, 16, 17, *and* 18 *(v. paras.* 654, 661, 662*).*
C. O. No. 98 *of vol.* 2 *(v. paras.* 656, 687*).*
C. O. No. 190 *of vol.* 2 *(v. paras.* 671, 688*).*
C. O. No. 200 *of vol.* 2 *(v. App. E. magistrate's rules No.* 20*).*
C. O. No. 10 *of vol.* 4 *(v. para.* 3298*).*

† *v. para.* 687, *and App. D, Judge's rules No.* 6.

694*a*. Where a judge cancelled a commitment, because it appeared that the magistrate and police acted illegally in taking up the case, the nizamut adawlut directed him to withdraw his order of annulment; to proceed to try the commitment in due course; and, on the conclusion of the trial, to refer the case for the orders of the court on any point of law in regard to which he might be in doubt. N. A. R. vol. 6, page 35.

Judge cannot annul a commitment because he considers that the magistrate acted illegally in taking up the case.

Session Judge.—*Page* 137.

733*a*. The operation of Const. No. 959, which declares that the general power of a session judge to fine is unlimited, is confined to the Lower Provinces. C. O. No. 227 of vol. 3.

Power of judge to fine.

749*a*. It is competent to session judges to try persons committed by themselves as civil judges for perjury or subornation of perjury. Act I. 1848, sect. 4.

Judge may try a person committed by himself for perjury.

Sessions.—*Page* 148.

808*a*. On a charge of theft and knowingly retaining in his possession stolen property, the prisoner was convicted of embezzlement. N. A. R. vol. 4, page 152. On a charge of conspiracy to defraud by falsifying documents, the prisoner was convicted of forgery. N. A. R. vol. 1, page 365.

Commitment on one charge, and conviction on another.

808*b*. A prisoner discharged without punishment on account of the erroneous framing of the charge, is not exempted from punishment thereby; he is still liable to be tried for the offence of which he appears to have been guilty. N. A. R. vol. 2, page 50.

Prisoner acquitted on an erroneous charge may be re-committed on a proper charge.

Sessions trials held without law officer.—*Page* 150.

822*a*. Session judges who try a case without the aid of a law officer or assessors, are required in the *lower provinces*, to denote on the face of the record the Regulation or Act under which the trial is held. C. O. No. 215 of vol. 3.

Judge to note, on the record of trials held without law officer, the law applicable to it.

Sentences by session judge and referrible trials.—*Page* 157.

863*a*. A session judge, concurring with the assessors in a verdict of justifiable homicide, referred the trial to the nizamut adawlut, because the prisoner had concealed the body of the deceased. This, besides that it had formed no portion of the charge, was deemed an insufficient ground of reference. N. A. R. vol. 6, page 78.

In a case of justifiable homicide, it is no ground of reference that the prisoner concealed the body.

Sentences by session judge; discretionary punishment.—*Page* 162.

888*a*. Under cl. 7, sect. 2, Reg. LIII. 1803, the session judge may award a pecuniary fine commutable to imprisonment. N. A. R. vol. 3, page 130.

Fine may be awarded commutable to imprisonment

Corporal punishment.—*Page* 166.

Note.—The following paragraphs are in supersession of para. 909.

909*a*. All offences which are opposed to the maintenance of good order and discipline in the public jails (as those enumerated in sect. 5, Reg. XIV. 1816) are punishable with stripes under sect. 6, Reg. II. 1834, when established against convicts sentenced to labor in irons. But it must be borne in mind, that the corporal punishment should be moderate, and that it should be inflicted only when it is thought to be "unavoidable for the maintenance of the discipline of the jail." C. O. No. 235 of vol. 3.

When convicts in jail are liable to punishment by stripes

909*b*. Prisoners punished by the magistrate for breach of jail discipline cannot afterwards be tried for the same offence, as any further punishment would be cumulative and therefore illegal. N. A. R. vol. 6, page 58.

If stripes, then no other punishment.

Fines.—*Page* 167.

915*a*. The operation of Const. No. 959, which declares that the general power of a session judge to fine is unlimited, is confined to the lower provinces. C. O. No. 227 of vol. 3.

Power of judge to fine.

Labor and irons.—*Page* 170.

932*a*. Accessaries before and after the fact being felons in consideration of law, the privilege of commuting labor to a fine should not be extended to them, as to those convicted of privity which is a misdemeanor only. C. O. No. 8 of vol. 4.

If the principal cannot commute labor to fine, neither can the accessary.

Tusheer.—*Page* 172.

944*a*. It is not lawful for any court or magistrate, within the territories under the government of the East India Company, to sentence any offender to be publicly exposed by tusheer, or to any other degrading exposure. Act II. 1849, sect. 2.

Tusheer abolished.

NOTE.—*This provision cancels paras.* 944 *to* 947.

Trials referred and called for.—*Page* 174.

954*a*. In all references of trials of murder, the report made to the magistrate of the inquest held on the body of the deceased is invariably to be transmitted with the proceedings. If no inquest has been held, the cause of omission is to be noted in the letter accompanying the trial, the magistrate being called upon if necessary for an explanation. C. O. No. 17 of vol. 1.

Report of inquest is invariably to be filed with the session proceedings

962*a*. The names of those prisoners only, in regard to whom the reference is made, are to be inserted in the marginal note of the letter of reference; the inclusion of others, who have died or escaped prior to the termination of the trial, or have been acquitted or sentenced by the session judge, being calculated to create confusion and to mislead. And no papers are to be submitted with the record, which relate exclusively to prisoners regarding whom the reference is not made,—as *e. g.* the defence of such prisoners, or the depositions of witnesses called in their behalf. C. O. No. 228 of vol. 3.

The papers connected with those prisoners only, regarding whom the reference is made are to be sent with the record; and their names only inserted in the letter.

Nizamut Adawlut.—*Page* 180.

986*a*. The nizamut adawlut are empowered to prescribe the forms and conduct to be observed by the sessions courts, and the magistrates, in all cases provided for by the regulations agreeably to their construction thereof. *Beng. and Ben.* Reg. X. 1796, sect. 3. *Ced. Prov.* Reg. XXII. 1803, sect. 3.

Power to direct subordinate courts; and to construe the regulations.

Power to revise trials.—Page 183.

998*a*. The nizamut adawlut in any case in which it appears to them, upon a review of the abstract statements or calendars of prisoners punished without reference, that the sentence passed is one which cannot lawfully be passed on a person convicted of the offence as stated in the abstract statement or calendar, are to annul the sentence, and to certify to the subordinate court the sentence or sentences which may lawfully be passed for such offence: and thereupon the subordinate court is to pass a new sentence according to law, and is to amend the record in accordance therewith. Act XIX. 1848, sect. 2.

Nizamut adawlut how to proceed upon a review of the statements if they consider that the sentence passed could not lawfully be passed:

998*b*. In any case in which it appears to the nizamut adawlut, upon a review of the abstract statements or calendars of prisoners punished without reference, that the verdict or judgment pronounced on any prisoner was not warranted by the evidence or that his sentence was too severe, it may, if it thinks fit, require the judge of the court in which the conviction was had to certify under his hand all the evidence taken in the case affecting such prisoners, with any observations which the judge may be desirous of making in explanation of the verdict, judgment, and sentence; and thereupon the nizamut adawlut may annul such verdict, judgment, and sentence if the verdict or judgment appears to it not warranted by the evidence, or mitigate the sentence if it appears too severe; and in either case is to certify its proceedings to the court in which the conviction was had, which is thereupon to make such orders as are conformable to the decision of the nizamut adawlut, and if necessary to amend the record in accordance therewith. Act XIX. 1848, sect. 3.

if they consider that the judgment was not warranted by the evidence, or that the sentence passed was too severe:

998*c*. Instead of proceeding under this Act, the nizamut adawlut may, whenever it thinks fit, call for the whole record of any criminal trial in any subordinate court, and pass thereon such orders as it thinks fit, but not so as to enhance the punishment awarded, or to punish any person acquitted in the subordinate court. Act XIX. 1848, sect. 4.

but the court may call for the whole record, and pass orders thereon

Distraint and Attachment.—*Page* 218.

1200*a*. The practice of retaining a number of peons at the thana, for the ostensible purpose of aiding in the distraint of property under the rules of sect. 27, Reg. XX. 1817, is irregular; and leads to much extortion and oppression by their constant illegal employment in police matters, and the consequent demand of tullubana in such cases. Magistrates are to leave with each darogah only sufficient badges for him to use as he may have occasion. C. O. Sup. Pol. L. P., No. 10 of 1844.

Muzkooree peons are not to be retained at the thana; but are merely to be employed as required.

Appeals.—*Page* 234.

1289*a*. Under the orders of government, deputy magistrates, as well as uncovenanted judges exercising magisterial powers, are not to exercise appellate authority; and petitions of appeal whether from covenanted or uncovenanted subordinates are not to be referred to them for decision. C. O. No. 3, March 7, 1849.

Appeals do not lie, and are not to be referred for decision, to deputy magistrates or uncovenanted judges.

1294*a*. The judge is also to note in the margin of the letter (transmitting to the nizamut adawlut an appeal against his own order) the names of all the prisoners in the case from the sentence in which one or more prisoners may have appealed, distinguishing the prisoners who have appealed from the others. If the petition be duly presented within the prescribed period of three months, the session judge is to transmit the records of commitment and trial in original, without taking copies of them. C. O. No. 8, July 20, 1849.

Judge forwarding appeal to nizamut adawlut, what to insert in the margin of the letter.

Records to be forwarded in original without taking copies.

Rules of office—Correspondence.—*Page* 242.

1350*a*. The bulk of public correspondence should be reduced as much as possible; instead of a number of enclosures, references should be made by a single letter or endorsement. C. O. Sup. Pol. L. P., No. 7 of 1848.

Bulk of correspondence to be reduced as much as possible.

1353*a*. Official communications in the native languages between European covenanted officers and uncovenanted judges should be made by roobakaree. The following forms of address are to be used in official communication with such officers:

Mode of communication with and form of address of uncovenanted judges.

Principal Sudder Ameen.

Christian, ...	Sir, ...		Esquire.
Mahomedan, ..	لياقت و اهليت مآب سلمه الله تعالى	...	خان بهادر ...
Hindoo, ...	ايضاً ...	...	راي بهادر ...

Sudder Ameen.

Christian, ...	Sir, ...	..	Esquire.
Mahomedan, ...	رفعت و عوالي منزلت سلمه	... ...	خان ...
Hindoo, ...	ايضاً ...	... ...	راي ...

Moonsiff.

Christian, ...	Sir, ...	..	Mr.
Mahomedan, ...	لعافيت باشند	... ...	ديانت و امانت پناه
Hindoo, ...	ايضاً	... ...	ايضاً ...

C. O. Nos. 122 and 128 of vol. 2.

15/0.a.

Police Officers, Adm. Suspension &c of,

1870.a. If an officer ultimately acquitted, has been "partly suspended", pending enquiry, he is not entitled to salary for the period of suspension. If he has been "improperly suspended" he must receive his back salary either from the suspending officer or from the Govt. acc.? & circumstances. [Comm. dispatch. Jud. Dep. No. dated 29th 1870 & paras: 19 & 20.

Rules of office—Miscellaneous.—*Page* 246.

1383*a*. An indent is to be submitted, in the following form, to the register of the nizamut adawlut, on the 1st October of each year for such forms of statements, warrants, &c., usually supplied to the local authorities from that office, as will be required for the ensuing year.

Indent for lithographic forms to be submitted on the 1st October.

Indent for lithographed forms for the year 1848.

Description of form.	No. last applied for.	No. in store on 1st October 1847.	No. now indented for.

C. O. No. 26, July 9, 1847.

Stamps.—*Page* 247.

1393*a*. Security-bonds taken by police officers are to be drawn out on plain paper. Const. No. 710.

Security-bonds taken by police officers.

Accounts—Jail.—*Page* 257

1431*a*. The jail darogah's commission on the proceeds of jail manufactures, when charged in the cash account, is to be supported by memoranda particularizing the amount payable, which are to be prepared and furnished to the magistrate annually by the accountant, forwarding the said documents to the accountant duly receipted by the darogah with the cash accounts in which said charges appear. Copies of these documents are to be retained by the magistrates for reference. C. O. Acc. No. 100, January 13, 1847.

Mode of supporting the payment of the jail darogah's commission

Police officers—Chokeedar.—*Page* 295.

1630*a*. All private servants employed as guards, watchmen, &c. come within the rules of sect. 21, Reg. XII. 1807. The magistrates are carefully to enforce the provisions of that law, taking care that the lists required are regularly given in to themselves, as well as to the assistants or deputy magistrates in charge of sub-divisions. C. O. Sup. Pol. L. P., No. 3 of 1847.

Lists to be furnished of all private servants employed as guards, &c.

Police Duties.—Charges cognizable.—*Page* 310.

1724*a*. The proceedings on a trial of simple burglary were declared void *ab initio*, in consequence of the investigation having been conducted in contravention of Reg. II. 1832; as no petition had been presented by the prosecutor, nor had any instructions to investigate the case been issued by the magistrate; and the prisoners were therefore acquitted. N. A. R. vol. 6, page 35.

In cases of burglary, the proceedings are illegal without a petition, or the order of the magistrate.

1724*b*. In some districts the provisions of Reg. II. 1832, are almost entirely set aside, and in others no cases are investigated but those in which the parties apply to the court. Both these

Opinion of the superintendent of police regarding the exer-

modes of carrying the law into effect are I think equally erroneous. The magistrates should in cases coming under this law exercise the discretion vested in them with great care, and only direct investigation where the offence is of a serious or aggravated character, or where the occurrence of numerous crimes, in particular divisions of the district, renders their interference necessary for the repression of the offence and greater security of property. *Police Report for the 1st six months of* 1840, *para.* 853.

cise of the discretion vested in magistrate by Reg. II. 1832.

1736*a*. Magistrates are to be particularly careful that these rules for abridging the proceedings of police officers are not neglected, and should call to account such officers as persist in not conforming to them. The session judges should avail themselves of every opportunity to point out to the magistrates any instances of neglect of these rules, which they may observe in proceedings before them. C. O. No. 4, April 7, 1849.

Magistrates and session judges to see that the rules for abridging police proceedings are not neglected.

Police Duties—Inquests.—*Page* 315.

1753*a*. The practice of probing wounds on the bodies of wounded or deceased persons, in order to ascertain their length, breadth, and depth, is prohibited; police officers are expected to report these particulars merely from inspection. C. O. No. 9 of vol. 4.

Wounds not to be probed.

Persons wearing arms.—*Page* 326.

1816*a*. A general order of a magistrate forbidding people to carry arms is illegal: and individuals should not be deprived of their weapons except in cases where there is reasonable ground to apprehend danger of a breach of the peace from their being carried about. N. A. R. vol. 3, page 196.

Magistrate cannot forbid the wearing of arms, unless there is fear of a breach of the peace.

Landholders—Duties.—*Page* 338.

1868*a*. Where a prisoner, the proprietor of an indigo factory, was committed by the magistrate on two separate counts; the first, for aiding and abetting in the dacoity; and the second, for harbouring dacoits; and the session judge acquitted him on the first count, and referred back the second count to the magistrate to be disposed of by him under the provisions of sect. 5, Reg. VI. 1840; and the magistrate then recorded his opinion of the guilt of the accused, and referred the proceedings on which the original commitment had been made for the final orders of the nizamut adawlut,—it was held that the proceedings were not sufficiently complete to authorize the magistrate to pass the orders submitted for confirmation, and he was instructed to permit the accused to file any further defence he might wish to offer, and to send for and examine any other evidence he might indicate. N. A. R. vol. 5, page 153.

Case of an indigo-planter accused of harbouring dacoits.

Jail—Offences.—*Page* 380.

2103*a*. The prisoners, convicts, were convicted of riot and insurrection in jail, and sentenced the leader to imprisonment with labor and irons in transportation for life, and the others to imprisonment with labor and irons in banishment for 14 years. N. A. R. vol. 6, page 61.

Precedent of riot and insurrection in jail.

2113*a*. Within the territories subject to the government of the East India Company, except within the local limits of the jurisdiction of the supreme court, and except within the settlements of the Straits of Malacca, any convict sentenced to imprisonment for life, or to transportation for life, who does any act, with the intention of thereby causing, or with the knowledge that he or she is

Convicts under sentence of imprisonment for life knowingly doing an act likely to cause the death of another, how punishable

likely thereby to cause, the death of any person, is, upon conviction thereof before the sessions court, subject to confirmation by the sudder court, to be punished with death or with transportation for life, or with corporal punishment not exceeding 39 stripes, whether such convict does or does not by such act cause the death of any person. Act XVIII. 1845, sect. 1.

2113*b*. Any such convict as aforesaid, who commits any offence whatever, other than the offences mentioned in the preceding section, or who is guilty of violent or disorderly conduct, after having been punished by the order of the superintendent of the jail in which he or she is confined, is, upon conviction thereof before the sessions court, subject if the sentence be for transportation for life, to confirmation by the sudder court, to be punished with transportation for life, or with corporal punishment not exceeding 39 stripes. Act XVIII. 1845, sect. 2.

Such convicts guilty of other violent or disorderly acts, how punishable.

Jail—Escape.—*Page* 384.

2133*a*. A prisoner effecting his escape while under commitment cannot, on his re-apprehension, be committed on the original charge and on a second count for the escape. A second count should charge some act arising out of the same circumstances as the original or first count. N. A. R. vol. 6, page 75.

A second count for escaping from jail cannot be added to the charge for the original offence, unless both acts charged arose out of the same circumstances

Jail—Execution of sentence.—*Page* 398.

2229*a*. The body of a person sentenced to death is invariably to be allowed to remain suspended for one hour at least; and it is not even then to be removed until death be ascertained to have taken place. C. O. No. 6, November 27, 1848.

Body of person hung to remain suspended for an hour.

2231*a*. It is not lawful for any court or magistrate, within the territories under the government of the East India Company, to order that any brand or indelible mark, of any kind, be made or renewed on any part of the person of any convicted offender. Act II. 1849, sect. 2. *This provision rescinds those quoted in paras.* 2231 *to* 2237.

Godna abolished.

2249. The provisions of this and the three succeeding paragraphs have been rescinded by Act I. 1849. See above JURISDICTION.

Jail—Release.—*Page* 410.

2294*a*. The permission of the government should be obtained for the removal to the insane hospital of a prisoner who has become insane while under sentence. N. A. R. vol. 6, page 80.

Removal to the insane hospital of a prisoner under sentence

Ferry Fund Committees.—*Page* 427.

2386*a*. The following amended rules, in supersession of those passed on the 8th November 1841, have been enacted by the government of Bengal for the appropriation of the surplus ferry collections: *Rule* 1. Committees shall be formed in each district for the management of the surplus ferry funds collected under Reg. VI. 1819, and applicable under cl. 2, sect. 7 of that enactment for the promotion of the convenience and safety of travellers, and the facility of commercial intercourse. *Rule* 2. Each district committee shall consist of not more than nine persons. The magistrate of the district and the executive officer of the division are to be ex-officio members of the committee. The remainder shall in the first instance be appointed by

Objects of appointment.

Formation of committee, and nomination of members.

government upon the recommendation of the superintendent of police, and shall consist as well of persons out of the service, natives and Europeans, as of those who are connected with it. Future vacancies to be filled up by the superintendent of police, subject to the approbation of government. *Rule* 3. The superintendent of police shall be a member of the local committees, and preside at the meetings whenever he is present. He shall also have a casting vote, whether absent or present, when opinions are divided. *Rule* 4. The magistrate will from time to time convene meetings of the committee for the transaction of business, giving due notice to the members. *Rule* 5. No meeting of the committee shall be held in the absence of the magistrate; but the magistrate and one other member, or the magistrate singly, may transact the business of the committee, if other members after due notice fail to attend. *Rule* 6. The magistrate may at his discretion undertake any business, which may be of such a nature as not to bear the delay of a reference to a meeting of the committee; he will on all such occasions report his proceedings at the next meeting. *Rule* 7. The whole country is divided into unions; the surplus ferry funds in these are to be thrown together and divided between the several districts which compose them. *Rule* 8. The unions shall be as follows: 1*st Union*, Sarun, Chumparun, Tirhoot. 2*nd Union*, Shahabad, Patna, Behar. 3*rd Union*, Monghyr, Bhaugulpore, Purneah, Maldah. 4*th Union*, Dinagepore, Rajshahye, Pubnah, Rungpore, Bograh. 5*th Union*, Mymensing, Sylhet, Dacca. 6*th Union*, Chittagong, Tipperah, Noacolly. 7*th Union*, Furreedpore, Backergunj, Jessore. 8*th Union*, Nuddea, Moorshedabad, 24-Pergunnahs, Baraset. 9*th Union*, Beerbhoom, Burdwan, Bancoorah, Midnapore, Hooghly, Howrah. *Rule* 9. At the close of each official year, the accountant will ascertain what is the amount of the surplus ferry funds in each union during the preceding year, and distribute the total equally amongst the several districts comprised in it; the government reserving to itself the power of making a different allotment of the funds, should such alteration hereafter appear expedient. *Rule* 10. Each committee will keep a book in which will be entered minutes of all its proceedings and resolutions. The proceedings of each meeting shall be attested by the members present. *Rule* 11. Each committee will apply the funds assigned to it to the completion of new, and the repair of old public works, in such manner as it may think fit, reporting at the close of each year the manner in which its funds have been applied, and stating the works to which its attention will be directed in the year ensuing. *Rule* 12. Provided that no *new* work, estimated at more than rupees 1000, shall be commenced without the sanction of government, obtained through the superintendent of police, who is empowered, when he may see fit, to authorize the commencement of any proposed work in anticipation of the government orders. *Rule* 13. Provided also that no part of the funds shall be expended on station roads or station improvements without the sanction of government. *Rule* 14. Each committee is authorized to entertain executive establishments for carrying on public works; but not to a greater extent than one-fifth of its annual assignment of funds, without the sanction of the superintendent of police. *Rule* 15. These rules relate exclusively to surplus funds accruing after the 30th April 1840. No surplus, which may have accrued in any district before that date, can be expended without the express sanction of government. C. O. Sup. Pol. L. P., No. 2 of 1848.

Superintendent of police to preside, and to have the casting vote.

Meetings how to be convened

Authority required for the transaction of business.

Country divided into unions.

Annual apportionment of surplus funds.

Book of minutes.

Funds to be applied at the discretion of the committee.

But no *new* work exceeding 1000 rupees to be undertaken without the sanction of government or the superintendent of police.

Funds not to be expended on the station.

Executive establishments.

Retrospective limit of these rules.

2386*b*. A memorandum of the funds at the credit of the committee is invariably to accompany applications to the superintendent of police for sanction to outlays on works, &c. contemplated by the committee. C. O. Sup. Pol. L. P., No. 8 of 1848.

Memo. of funds in hand to be forwarded with applications for sanction to outlays.

Abkaree laws.—*Page* 458.

2538*a*. If any person wilfully and maliciously gives false information in respect to there being an illicit still or illicit stills, or fermented or spirituous liquors, or intoxicating drugs, or materials prepared for the manufacture of spirituous liquors and drugs, in any premises, and so procures that such premises are searched to the injury and vexation of the owners thereof, or of any other person or persons whatsoever, such false informer is, besides being subject to any other penalties or damages to which he would be subject under the general law, liable to imprisonment with or without labor for a term not exceeding two years, and to fine not exceeding 500 rupees, commutable to a further term of imprisonment for six months if not paid. Act XXV. 1840, sect. 7.

Persons wilfully and maliciously giving false information regarding illicit stills, &c., how punishable

2538*b*. Persons guilty of such offence are liable to the punishment provided in the above rule, on conviction thereof before any magistrate. Act XXIII. 1848. *This rescinds note* 2438*n*.

on conviction before the magistrate.

Gambling.—*Page* 478.

2628*a*. All agreements, whether made in speaking, writing, or otherwise, by way of gaming or wagering, are to be null and void: and no suit is to be allowed in any court of law or equity for recovering any sum of money or valuable thing alleged to be won on any wager or entrusted to any person to abide the event of any game, or on which any wager is made. Act XXI. 1848, sect. 1.

All wagers are null and void; and are not to be enforced in the courts.

Security for good behaviour.—*Page* 482.

2645*a*. A commitment cannot be made on a charge of being a bad character. N. A. R. vol. 6, page 76.

Commitment cannot be on such charge

2646*a*. When a magistrate has sentenced a person to imprisonment in default of security, without providing that the case should be submitted to the session judge for sanction to his detention beyond one year, it is not competent to the judge to enhance the original sentence on the subsequent proposition of the magistrate. N. A. R. vol. 6, page 76.

If the magistrate wishes to take security for more than one year, he must pass such order in the first instance.

2657*a*. As a general rule previous convictions should not be considered in judging of a person's character. C. O. Sup. Pol. L. P., No. 5 of 1847.

Previous convictions no cause for requiring security

2663*a*. All mochulkas and security-bonds, which by force of any Act or Regulation may be taken by criminal courts of the East India Company, or by magistrates or joint-magistrates, for keeping the peace or for good behaviour, may be enforced in the manner prescribed by sections 8 and 9 of this Act (*See paras.* 2799*b* and 2799*c below*). Act V. 1848, sect. 11.

Penalty of bond how to be enforced.

Affrays.—*Page* 502.

2753*a*. The prisoners, convicts, convicted of riot and insurrection in jail, attended with severe wounding of the jail darogah, and causing the authority of the magistrate and the session judge to cease in the jail for six days, were sentenced, the leader to imprisonment with labor and irons in transportation for life; and the others to imprisonment with labor and irons in banishment for 14 years. N. A. R. vol. 6, page 61.

Precedent of riot and insurrection in jail.

Mochulkas.—*Page* 512.

2795. Sect. 4, Reg. IV. 1825 is repealed. Act V. 1848, sect. 1.

2795*a*. In the territories subject to the presidency of Bengal, it is lawful for the magistrates and joint-magistrates to take mochulkas or penal recognizances in the form annexed to this Act, as well from British subjects as from other persons, in all cases wherein it may appear just and necessary to require the same for the maintenance of the peace in their respective jurisdictions, although the party to be bound in such recognizances may not have been convicted of any specific offence, provided that the amount of the recognizance in all such cases shall be proportionate to the condition in life of the said party and to the circumstances of the case. Act V. 1848, sect. 2.

Magistrates may take mochulkas from any person, although not convicted of any specific offence

2795*b*. In cases of an aggravated nature wherein it appears necessary to require security for keeping the peace in addition to the recognizance of the party, it is lawful for such magistrates to direct the same and to fix a reasonable amount for the security-bond to be executed in the form annexed to this Act by the surety or sureties. Act V. 1848, sect. 3.

Magistrates may require security in addition to the mochulka

2795*c*. Whenever it appears to the magistrate that the period for which the party should be bound to keep the peace with or without additional security, need not exceed one year, it is lawful for him, without reference to superior authority, to give directions accordingly, and in default of such recognizance or additional security to commit the party to prison in the civil jail until he shall do what has been required of him. Act V. 1848, sect. 4.

Magistrate may take mochulka and security for one year without reference to superior authority, and confine in default.

2795*d*. Whenever it appears to the magistrate that the period for which the party should be bound to keep the peace with or without additional security ought to exceed the period of one year, the magistrate is to record his opinion to that effect with an order specifying the amount of recognizance and security as well as the number of sureties which should in his judgment be required, and the period for which the recognizance and security should be required, which however is in no case to exceed three years. If the party does not furnish the recognizance and security so required, the proceedings are to be laid before the session judge, who, after examining them and calling for any further information which he may think necessary, is to pass orders on the case confirming, modifying, or annulling the orders of the magistrate; and if the orders so passed by the session judge confirm to any extent the requisition for recognizance or securities, the session judge is to direct the magistrate to commit the party to prison in the civil jail until he shall do what has been required of him. Act V. 1848, sect. 5.

If the magistrate requires the mochulka or security for more than one year (the period is never to exceed 3 years) he is to lay his proceedings before the session judge, who may confirm, modify, or annul his orders.

2795*e*. Provided always that no party is to be kept in prison under the foregoing provisions of this Act for a longer period than that for which the recognizance and securities have been required from him. Act V. 1848, sect. 6.

No person is to be imprisoned for a longer period than that fixed for the mochulka.

2796*a*. All sentences and orders passed under this Act are appealable subject to the general provisions which regulate appeals. Act V. 1848, sect. 10.

Appeals lie as usual.

2799*a*. The provisions contained in sects. 5, 6, and 7, Reg. VIII. 1818 are applicable to all persons confined under the foregoing provisions of this Act, and to all sureties who have given security under this Act. Act V. 1848, sect. 7.

Release of prisoners. Prohibition against their removal. Rules regarding sureties.

2799*b*. Whenever it is proved before the magistrate that any such recognizance has been forfeited, he is to proceed to enforce the penalty of such recognizance in the mode prescribed for the satisfaction of decrees of the civil court. Act V. 1848, sect. 8.

Penalty of recognizance to be enforced as decree of civil court.

2799*c*. Whenever it is proved before the magistrate that any such recognizance has been forfeited, if a security-bond has been taken and the magistrate thinks that proceedings should be had upon such bond, he is to give notice to that surety or sureties to pay the penalty, or to show cause why it should not be paid; and if no sufficient cause be shown, the magistrate is to proceed to recover the penalty from such surety or sureties by the attachment and sale of any of his or their property in the mode prescribed for the attachment and sale of property in satisfaction of decrees of the civil court; and if the penalty be not paid and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement by order of the magistrate in the civil jail of the station during a period not exceeding six months. Act V. 1848, sect. 9. *This cancels para.* 2801.

Magistrate how to recover the penalty of the security-bond, if the recognizance be forfeited.

2799*d*. All mochulkas and security-bonds which by force of any Act or Regulation may be taken by criminal courts of the East India Company, or by magistrates or joint-magistrates, for keeping the peace or for good behaviour, may be enforced in the manner prescribed by sects. 8 and 9 of this Act. Act V. 1848, sect. 11.

All mochulkas and security-bonds may be enforced as above.

2799*e*. *Form of mochulka.* Whereas I inhabitant of , have been called upon to enter into a mochulka to keep the peace for the term of , I hereby bind myself not to commit any act that can occasion a breach of the peace during the said term; and in case of my making default therein I bind myself to forfeit to government the sum of rupees. Dated the day of

Form of mochulka.

Form of security. Whereas inhabitant of , has been called upon to give security to keep the peace for the term of , I hereby declare myself surety for the said that he shall not commit any act that can occasion a breach of the peace during the said term; and in case of his making default therein I hereby bind myself to forfeit to government the sum of rupees. Dated the day of Act V. 1848.

Form of security-bond.

Homicide and Murder.—*Page* 530.

2868*a*. Where a session judge, concurring with the assessors in a verdict of justifiable homicide, referred the trial to the nizamut adawlut, because he was in doubt whether the subsequent conduct of the prisoner, in making away with the body and denying that he had done so in the sessions court, did not render him amenable to justice for the concealment of the homicide;—it was held that this, besides that it had formed no portion of the charge, was not a sufficient ground for reference; and the case was returned to the judge to pass his own order on it. N. A. R. vol. 6, page 78.

In a case of justifiable homicide, it is no ground of reference that the prisoner secretly made away with the body.

Thuggee.—*Page* 564.

2949*a*. The word "thug" when used in any Act heretofore passed by the council of India, is to be taken to have meant and to mean a person, who is, or has at any time been habitually associated with any other or others for the purpose of committing, by means intended by such person or known by such person to be likely to cause the death of any person, the offence of child-stealing, or the offence of robbery not amounting to dacoity. And the word "thuggee" when used in such Acts is to be taken to have meant and to mean the offence of committing or attempting any such child-stealing or robbery by a thug. And the expression "murder by thuggee," when used in such Acts, is to be taken to have meant and to mean murder when employed as the means of committing such child-stealing or such robbery by a thug. Act III. 1848.

Meaning of the expressions—thug, thuggee, and murder by thuggee.

Dacoity.—*Page* 593.

3049*a*. Whereas it has been considered necessary to adopt more stringent measures for the conviction of professional dacoits, who belong to certain tribes systematically employed in carrying on their lawless pursuits in different parts of the country, and for this purpose to extend the provisions of Acts XXX. 1836, XVIII. 1837, and XVIII. 1839, for the prevention of thuggee, to persons concerned in the perpetration of dacoity, it is enacted, that whosoever is proved to have belonged, either before or after the passing of this Act, to any gang of dacoits, either within or without the territories of the East India Company, is to be punished with transportation for life, or with imprisonment for any less term, with hard labor. Act XXIV. 1843, sect. 1.

Persons belonging to gangs of dacoits, how punishable.

Theft.—*Page* 607.

3101*a*. Attempts to commit theft do not fall under the provisions of Act III. 1844. C. O. No. 3 of vol. 4.

Attempts to commit petty thefts are not punishable by stripes.

3109*a*. Whoever is proved to have belonged, either before or after the passing of this Act, to any wandering gang of persons associated for the purposes of theft or robbery, not being a gang of thugs or dacoits, is to be punished with imprisonment with hard labor for any term not exceeding seven years. Act XI. 1848, sect. 1.

Persons belonging to a wandering gang of thieves, how punishable.

3109*b*. Any person accused of the offence of belonging to any such gang as aforesaid, or of the offence of unlawfully and knowingly receiving or buying property stolen or plundered by any such gang, may be committed by any magistrate within the territories of the East India Company, and may be tried by any court which would have been competent to try him if his offence had been committed within the zillah where that court sits. Act XI. 1848, sect. 2.

Such persons may be committed by any magistrate and tried by any sessions court

3109*c*. No court is, on the trial of any offence under this Act, to require any futwa from any law officer. Act XI. 1848, sect. 3.

No futwa to be taken in such case

Receiving stolen property.—*Page* 629.

3178*a*. A husband and wife should not be indicted jointly as receivers of stolen property found in their house, unless it be in evidence that the wife acted independently and not under the influence of her husband. N. A. R. vol. 1, page 353; and vol. 6, page 92.

Husband and wife not to be indicted jointly as receivers.

Arson.—*Page* 631.

3187*a*. The wilfully and maliciously setting fire to any village, town, house, or other building, constitutes the crime of arson, which is punishable only by the sessions court. This definition includes the malicious and wilful burning of a boat laden with men or merchandise, or of a tent, or other place used for the time being as a dwelling. Acts of incendiarism other than the above do not fall within the definition of arson found in the regulations; and the criminality of such acts varies very much according to the presumed motives of the incendiary, the effect of his act either actual or probable, and generally the circumstances which distinguish it. But there is nothing in the regulations which precludes a magistrate from disposing finally of such cases, provided he considers the punishment, which he is competent to award under sect. 19, Reg. IX. 1807, adequate to the offence proved. The magistrates are to act according to this view of the law, bearing in mind that, if by any act of incendiarism, not coming within the above definition

Definition of arson, punishable by the sessions court only.

All other cases are within the competence of the magistrate.

But he may commit those accompa-

of arson, lives are endangered or valuable property destroyed, or if the act is accompanied by other aggravation, they are at liberty to exercise their discretion in committing the accused to the sessions court. In such cases, however, the magistrates are required to state specially in the calendar or roobakaree of commitment their reasons for making over the prisoners to the sessions court, in preference to passing sentence themselves; and any commitment of this kind, for which such special reason is not assigned, is liable to be cancelled. Those cases, in which the sentence sanctioned by cl. 7, sect. 2, Reg. LIII. 1803 is considered insufficient, are to be referred by the session judges for the final orders of the nizamut adawlut under sect. 6, Act XXXI. 1841. C. O. No. 3, June 5, 1848.

nied with aggravation;

explaining his reasons in the calendar or roobakaree.

If the discretionary punishment within the competence of the judge is insufficient; he is to refer the trial.

Perjury.—*Page* 654.

3271*a*. Where a witness, accused of having given evidence under a false name, was examined on oath as to the truth of the accusation, instead of his defence being taken without oath on that point, and was then committed for having given false and contradictory statements, he was acquitted. N. A. R. vol. 6, page 91.

Instance of acquittal where the oath should not have been administered.

3277*a*. The powers vested by cl. 2, sect. 14, Reg. XVII. 1817 in zillah and city judges of committing persons chargeable with perjury or subornation of perjury in cases pending before such judges, are vested in principal sudder ameens in civil cases pending before them: and the principal sudder ameens and the magistrates are authorized and required to proceed in the manner in which the said judges and magistrates are authorized and required to proceed by the said clause. Act I. 1848, sect. 3.

Principal sudder ameens may commit to the sessions for perjuries in cases before themselves.

3281*a*. It is competent to the session judges to try persons committed by themselves as civil judges under the provisions of cl. 2, sect. 14, Reg. XVII. 1817 for perjury or subornation of perjury, any law to the contrary notwithstanding. Act I. 1848, sect. 4. *This cancels the concluding part of para.* 3281.

Session judge may try persons committed by himself as civil judge.

3283 *to* 3287. Under the provisions of Act I. 1848 these paragraphs should be expunged.

3303. Such parts of this paragraph as authorize a sentence of tusheer have been rescinded by Act II. 1849. *See para.* 944*a*.

Tusheer abolished.

Forgery.—*Page* 667.

3319. The rules for the commitment of cases of forgery, brought to light in the course of proceedings in the civil or other courts, have been altered, as follows. The penalties remain the same.

3319*a*. Within the territories subject to the presidency of Fort William in Bengal except the local limits of the courts established by Her Majesty's Charter, the magistrates are not to receive any charges of forgery, or of procuring or causing forgery, or of fraudulently issuing and publishing as true or otherwise fraudulently giving effect to or attempting to give effect to false and fabricated deeds and papers, knowing the same to be false and fabricated, which may be preferred by parties to civil or criminal cases in respect to deeds and papers offered in evidence in such cases against the adverse parties to such cases, or other persons, except as provided in the next following section. Act I. 1848, sect. 1.

Magistrates are not to receive charges of forgery, or of knowingly giving effect to false and fabricated papers, in cases before other courts

3319*b*. In cases pending before any civil or criminal court (except the court of the magistrate, or of any officer exercising the committing powers of a magistrate) in which there appears to the court sufficient grounds for sending for investigation to the magistrate a charge of any of

Unless such courts make the cases over to them.

the offences specified in section 1 of this Act, the court is to send the party or parties accused in custody to the magistrate, together with the evidence and documents relevant to the charge, and is to take a recognizance from each of the witnesses who have given such evidence to appear before the magistrate, who is thereupon to receive such charge and to proceed with it in the usual course. Provided always that nothing herein contained is to be construed to affect the powers vested in session judges in cases of forgery by sect. 6, Reg. II. 1807 (*paras.* 3292 *to* 3295). Act I. 1848, sect. 2.

Mode of procedure in such cases.

3319*c*. For the purposes of this Act, the expression civil courts is to be held to include all revenue officers acting judicially. Act I. 1848, sect. 5.

The same rule applies to the courts of revenue officers acting judicially.

3323. Such parts of this paragraph as authorize a sentence of tusheer have been rescinded by Act II. 1849. *See para.* 944*a*.

Tusheer abolished

Appendix A. No. 22½.—*Page* 713.

C. O. No. 5, April 7, 1849.

To Mahomed Buksh, Nazir of the foujdaree court of zillah Hooghly.

Whereas Abdoolah Garcewan, inhabitant of Taltullah bazar, stands charged upon the report of a police officer [or upon credible information, *as the case may be*] with the crime of murder, you are hereby directed under sect. 4, Reg. IX. 1807, to apprehend the said Abdoolah Garcewan, and produce him before the magistrate of the said court.

Warrant upon the report of a police officer, or credible information.

Dated the day of January, 1849.
L. S.

A. B.,
Magistrate.

Appendix D. No. 17.—*Page* 803.

SESSION JUDGE'S STATEMENT No. 12.

Col. 1.	Col. 2.	Col. 3.	Col. 4.	Col. 5.
1	10	6	0	16
2	7	6	1	14
3	11	1	0	12
Total,..	28	13	1	42

The particulars of each case should be separately entered, as in the margin. But if the number of cases be too numerous to be conveniently entered in the lithographed form, the total number of cases of each month, and the total number of days occupied by them, may be entered as in the margin. The period between the date of commitment and the date of commencement of trial should be given in every case, without reference to the cause which has occasioned delay in taking up a commitment, any needful explanation being entered under the column of remarks. C. O. No. 214 of vol. 3.

Col. 1.	Col. 2.	Col. 3.	Col. 4.	Col. 5.
January, 7 cases.	70	60	24	154
February, 8 cases.	105	34	74	213
Total, 15 cases.	175	94	98	367

Appendix E. No. 15.—*Page* 812.

MAGISTRATE'S STATEMENT No. 2, Part 6.

Prisoners in custody in default of security or penal recognizance to keep the peace under sect. 2, Reg. IV. 1825, and Act V. 1848.

Names	Amount of security required.	Term of imprisonment in default.	Date of order and by whom passed	Causes of requisition of security and other remarks

C. O. August 11, 1848.

Appendix E. No. 17.—*Page* 813.

MAGISTRATE'S STATEMENT No. 4.

Monthly and Annual.

Abstract statement of summary suits for forcible dispossession under Act IV. 1840, decided and pending.

1	2	3	4	5.	6	7.	8.	9	10	11.	12.	13	14.
Name and official designation of officers, and the powers exercised by them.	Pending at the close of —.	Instituted during the month of —.	Received by transfer during —.	Total	Transferred to other courts.	Remaining to be disposed of.	Decided on their merits.	Adjusted or withdrawn	Dismissed on default.	Total disposed of.	Pending at the end of —.	Pending above three months.	Explanation of entries in col. 13
Mr — Magistrate Mr. — Joint-Magistrate. Mr. ——													*Magistrate's rules, para.* 76
Total, ...													

This form has been substituted for that formerly in use by C. O. No. 7, June [illegible] 1849.

Index to Regulations and Acts quoted in the text.—*Page* 861.

Year.	No.	Sec.	Cl.	Paragraph	Year.	No.	Sec.	Cl.	Paragraph.
1840.	XXV.	7.	—	2538*a*	1849.	II.	2.	—	944*a*, 2231*a*.
1845.	XVIII.	1.	—	2113*a*.		IV.	1.	—	95*a*.
		2.	—	2113*b*			2.	—	95*b*.
1848.	XIX	2.	—	998*a*			3.	—	95*c*
		3.	—	998*b*			4.	—	95*d*.
		4.	—	998*c*.			5.	—	95*e*.
	XXI.	5.	—	2628*a*.			6.	—	95*f*.
	XXIII.	—	—	2538*b*.			7.	—	95*g*.
1849.	I	2	—	165.					
		3.	—	165*a*.					
		4.	—	165*b*					
		5.	—	165*c*.					
		6.	—	165*d*.					
		7.	—	165*e*.					
		8.	—	165*f*.					
		9.	—	165*g*.					

Index to Circular Orders of Nizamut Adawlut.—*Page* 876.

No.	Year.	Date.	Paragraph.
—	1848.	L. P., May 12, ...	526*a*.
5.	....	L. P., August 11, ...	Appendix E. 15.
6.	....	L. P., November 27, ...	2229*a*.
3.	1849.	L. P., March 7, ...	1289*a*.
4.	....	L. P., April 7, ...	1736*a*.
5.	....	L. P., April 7, ...	235*a*. Appendix A. 224.
8.	....	L. P., July 20, ...	1294*a*.

Index to Circular Orders of Superintendent of Police, L. P.—*Page* 878.

No.	Date.	Paragraph.	No.	Date.	Paragraph.
	1847.			1848.	
3.	May 29, ...	1630*a*.	2.	January 26, ...	2386*a*.
5.	June 29, ...	2657*c*.	3.	February 12, ...	App. F. 9
7.	September 22, ...	590*a*.	5.	April 20, ...	526*a*.
			7.	October 18, ...	1350*a*.
			8.	November 4,..	2386*b*.

BOOK I.

OF THE COURTS, THEIR POWERS, RULES OF PRACTICE, AND MODES OF CONDUCTING BUSINESS.

CHAPTER I.

OF THE CONSTITUTION AND GENERAL JURISDICTION OF THE CRIMINAL COURTS.

SECTION I.

OF THE RISE, PROGRESS, AND GRADUAL IMPROVEMENT OF THE PENAL SYSTEM.

1. In sketching the history of the system of Penal Law, established by the British Government in India, it seems necessary to recount, in the first place, as concisely as possible, the Acts of Parliament, by which the servants of the East India Company were entrusted with a legislative power in their territorial acquisitions; for it is laid down by Blackstone, that "in conquered or ceded countries, that have already laws of their own, the King may indeed alter or change those laws; but till he does actually change them, the ancient laws of the country remain, unless such as are against the law of God, as in the case of an infidel country."[a]

2. The administration of criminal justice in Bengal, at the period of the East India Company's acquisition of the Dewanny, had been guided for more than two centuries, by the penal system of the Mahomedans, by whom it had been forced upon the Hindoos by right of conquest. The Hindoo criminal code, so long exploded, was indeed but ill-adapted to the actual state of society; and the Hindoos, as well as Mahomedans, had become accustomed to, and acquainted with the ordinances of Mahomed, however defective and irrational, and however much opposed to those principles of law, which respect, alike, the rights of the individual, and the interests of the community. Of this system we shall presently speak more in detail, though in a treatise of this nature it must necessarily occupy but a small space.

Legislative powers of Government of India. 13th Geo. III. Chap. 63.

3. By the Statute of the 13th George III. Chapter 63, Section 7, it was enacted, "that the whole civil and military government of the presidency of Fort William, and also the ordering, management, and government, of all the territorial acquisitions and revenues in the kingdoms of Bengal, Bahar, and Orissa, shall, during such time as the territorial acquisitions and revenues shall remain in the possession of the United Company, be vested in the Governor

(a) The materials of this sketch have been taken from Harington's Analysis; the Supplement to Colebrooke's Digest of the Regulations; the Fifth Report of the Select Committee of the House of Commons; Mill's History of India, and other works. In some few places the language of these authorities has been adopted, and without the usual acknowledgment implied by inverted commas; as it seemed better to confine these marks to quotations from official documents, which are necessarily frequent.

General and Council in like manner, to all intents and purposes, whatsoever, as the same now are, or at any time heretofore might have been, exercised by the President and Council, or Select Committee, in the said kingdoms." And by Section 36, of the same Act, it was declared "lawful for the Governor General and Council, from time to time, to make and issue such rules, ordinances, and regulations, for the good order and civil government of the settlement of Fort William, &c. as shall be deemed just and reasonable; such rules, ordinances, and regulations, not being repugnant to the laws of the realm," subject only to registry and publication in the Supreme Court of judicature (then first established) "with the consent and approbation of the said Court."

21st Geo. III. Chap. 70.

4. By the Act of the 21st George III. Chapter 70, the express purpose of which was to explain and amend the Act, from which the above passages are quoted, it was provided in Section 23, "that the Governor General and Council shall have power and authority, from time to time, to frame regulations for the provincial courts and councils," under the restriction, that copies should be transmitted to the Court of Directors and to the Secretary of State, and that they should not be disallowed by His Majesty in Council, within two years.

37th Geo III. Chap. 142

5. In 1797, the Regulations, which had been already passed under the powers conferred on the Governor General and Council, by the above-mentioned Statutes, were expressly acknowledged by the eighth Section of the Act 37th, George III. Chapter 142, in the following terms—"And whereas certain regulations for the better administration of justice among the native inhabitants and others, being within the provinces of Bengal, Bahar, and Orissa, have been, from time to time, framed by the Governor General in Council in Bengal; and among other regulations, it has been established and declared, as essential to the future prosperity of the British territories in Bengal, that all regulations passed by Government, affecting the rights, properties, or persons of the subjects, should be formed into a regular code, and printed, with translations, in the country languages; and that the grounds of every regulation be prefixed to it; and that the courts of justice within the provinces be bound to regulate their decisions by the rules and ordinances which such regulations may contain, whereby the native inhabitants may be made acquainted with the privileges and immunities granted to them by the British Government, and the mode of obtaining speedy redress for any infringement of the same: and whereas it is essential that so wise and salutary a provision should be strictly observed, and that it should not be in the power of the Governor General in Council to neglect or to dispense with the same: be it therefore enacted, that all regulations which shall be issued and framed by the Governor General in Council at Fort William in Bengal, affecting the rights, persons, or property of the natives or of any other individuals who may be amenable to the provincial courts of justice, shall be registered in the judicial department, and formed into a regular code, and printed, with translations, in the country languages, and that the grounds of each regulation shall be prefixed to it, and all the provincial courts of judicature shall be, and they are hereby directed to be bound by and to regulate their decisions by such rules and ordinances as shall be contained in the said regulations; and the said Governor General in Council shall annually transmit to the Court of Directors of the East India Company ten copies of such regulations as may be passed in each year, and the same number to the Board of Commissioners for the affairs of India."

6. The regulation of the Indian Government, to which reference is made in the above Section, is Reg. XLI. 1793, the very words of which have been for the most part adopted; and, as Mr. Harington justly observes, "supported upon this firm basis, it may be deemed the corner-stone of the system of regulation and polity, for the internal government of these provinces, which was instituted in the year 1793 by Marquis Cornwallis." Such adoption of the language and principles of the Indian Government may at least be taken to imply, on the part of the British Parliament, a confirmation of the local power of legislation, and an approval of the manner in which that power had been exercised.

7. On the renewal of the Company's Charter in 1813, the regulations were again acknowledged by Section 66 of the 53rd George III. Chapter 155, which enacts that "the Court of Directors should annually lay before both houses of Parliament one copy of all the regulations made by their several Governments in India." 53rd Geo. III. Chap. 155.

8. Lastly, under the present Charter [3rd and 4th Wm. IV. Chapter 85,] the Governor General of India in Council has "power to make laws and regulations for repealing, amending or altering, any laws or regulations whatever now in force, or hereafter to be in force, in the territories of India or any part thereof, and to make laws and regulations for all persons, whether British or native, foreigners or others, and for all courts of justice, whether established by His Majesty's Charters or otherwise, and the jurisdictions thereof, and for all places and things whatsoever within and throughout the whole and every part of the said territories, and for all servants of the said Company within the dominions of princes and states in alliance with the said Company;" except as to matters affecting the prerogative of the crown, or the authority of Parliament, or the constitution or right of the Company; and subject to the disallowance of any such laws and regulations by the Court of Directors. All such laws and regulations are of the same force as an Act of Parliament; and it is not necessary to register or publish them in any court of justice. It is also provided, that a full, complete, and constantly existing right and power is reserved to Parliament to repeal and alter at any time, any such law or regulation; and that all the laws and regulations are to be laid before Parliament. 3rd and 4th Wm. IV. Chap 85.

9. Such are the legislative powers which have been at various times committed by Parliament to the Indian Government. We proceed now to trace the steps, by which the penal system now in force has advanced.

10. On the Company's first acquisition of the Dewanny, it was deemed advisable to interfere but little with the existing system. Instead of abrogating the Mahomedan criminal law, substituting a new code founded on European experience, and providing new courts with progressive degrees of power, in which the fear of detection stimulates inertness and overawes injustice; instead of immediately subverting the existing system, and destroying the old establishments, because they were not based on the principles familiar to the conquerors, or because their functions were ill discharged; it was wisely determined to introduce improvements with caution and due circumspection. The administration of criminal justice was therefore left to the tribunals previously instituted. Those entrusted with the duties, which are now within the cognizance of our judicial authorities, are thus enumerated in the report of the committee of circuit:—"The Nazim, as supreme magistrate, presides

Penal system of Indian Government, rise, progress, and gradual improvements of.

1765.

personally in the trial of capital offenders;—the deputy of the Nazim takes cognizance of quarrels, frays, and abusive names;—the foujdar is the officer of police, the judge of all crimes not capital; the proofs of these last are taken before him, and reported to the Nazim for his judgment and sentence upon them;—the mohtesib has cognizance of drunkenness and of the vending of spirituous liquors and intoxicating drugs, and the examination of false weights and measures;—and the cotwal is the peace-officer of the night, dependent on the foujdaree."

11. But it would appear that the officers here enumerated were confined to the capital; for, beyond its precincts, the zemindar, who was originally the chief fiscal officer of a district, exercised both a civil and a criminal jurisdiction almost supreme within the territory over which he was appointed to preside. The minor offences he visited with fines, imprisonment, or corporal punishment, according to his individual pleasure or sense of justice; and even in capital cases he was under no further restraint than of reporting the circumstances to the Nazim before proceeding to execution. The government, but rarely interfered with his decisions. Thus it ever is with despotic governments; they do not interpose between their officers and their subjects; they do not understand the right of the individual as opposed to the general order of the state; their agents are entrusted with unlimited powers, and in the exercise of them they are left unrestrained. The difference between a despotic and a just government lies in this, that the one revenges, the other punishes; the one asserts its power with passion, the other calmly vindicates its authority; the former, unembarassed with scruples, is content to believe that the real offender is among those who suffer; the latter is ever filled with a tender apprehension lest the safety of the innocent should be endangered, and lest the powers appointed to protect the people, should be perverted to oppress them.

12. But even if the institutions of the native government had been in themselves excellent, it would yet be no cause for wonder that the administration of justice ceased at a time, when the government of the country underwent a total change, when the Nazim was left without power to maintain the authority of his tribunals. The best instruments may be applied to the vilest purposes; and as an establishment, however good the principles on which it is founded, must fall to the ground, if the check of supervision is neglected in practice, so institutions, which have been perverted to accomplish only evil, may be capable of producing much good, if the conduct of the ministerial officers is attentively and fitly inspected.

13. The British Government therefore commenced by providing means for superintending the native tribunals. In August 1769, certain servants of the Company, under the title of supervisors, were stationed in appropriate districts throughout the country with this intent; and in the next year two councils, with authority over the supervisors, were stationed one at Moorshedabad, and another at Patna. In 1772 additional experience allowed the government to create new courts, and to furnish them with certain rules, which were drawn up by the committee of circuit, and adopted by the President and Council on the 21st August of that year. In the report which accompanied these regulations, the committee observed—"we have confined ourselves, with a scrupulous exactness, to the constitutional forms of judicature already established in this province, which are not only such as we think in themselves best calculated for expediting the course of justice,

1769.

1772.

but such as are best adapted to the understanding of the people: where we shall appear to have deviated, in any respect, from the known forms, our intention has been to recur to the original principles, and to give them that efficacy, of which they were deprived by venal and arbitrary innovations, by partial immunities granted as a relief against the general and allowed abuse of authority, or by some radical defect in the constitution of the courts in being." By this scheme a court of criminal judicature was established in each district under the denomination of foujdarce adawlut, in which a kazee and mooftee, with the assistance of two moulavies, as expounders of the law, were appointed to hold "all trials of murder, robbery, and theft, and all other felonies; forgery, perjury, and all sorts of frauds and misdemeanors, assaults, frays, quarrels, adultery, and every other breach of the peace, or violent invasion of property;" and it was also declared to be the duty of the collector of the district (he being a covenanted servant of the Company) "to attend to the proceedings of this court so far as to see that all necessary evidences are summoned and examined; that due weight is allowed to their testimony; and that the decision passed is fair and impartial according to the proof exhibited in the course of trial; and that no causes be heard or determined but in the open court regularly assembled." A separate and superior court of criminal jurisdiction was at the same time established at Moorshedabad, under the designation of Nizamut Sudder Adawlut, in which was to preside, by the title of daroga, a chief officer, appointed on the part of the Nazim, assisted by the chief kazee, the chief mooftee, and three capable moulavies; whose duty it was declared to be "to revise all the proceedings of the foujdaree adawlut; and in capital cases, by signifying their approbation or disapprobation thereof, with their reasons at large, to prepare the sentence for the warrant of the Nazim." A control over the proceedings of this court, similar to that which the collectors of revenue were empowered to exercise over the provincial courts, was vested in the committee of revenue at Moorshedabad, and the object of such control was stated to be "that the Company's administration, in character of King's Dewan, may be satisfied, that the decrees of justice, on which the welfare and safety of the country so materially depend, are not injured or perverted by the effects of partiality or corruption."

14. Certain rules were supplied for the guidance of these courts; the collector was directed to keep a box, under his own key, at the door of the cutcherry for the reception of petitions; complete records were to be kept by the foujdaree adawluts, and transmitted to the superior courts twice every month; the collector also was to keep an abstract register of all the proceedings of that court, to be transmitted in like manner; the authority of the foujdaree adawlut was to extend to corporal punishment, imprisonment, sentencing to the roads and fines, but not to the life of the criminal; in capital cases the trial was to be forwarded to the Nizamut Adawlut, and ultimately to be laid before the Nazim; persons guilty of misdemeanors, whose rank, caste, or station in life was thought to exempt them from corporal punishment, were made liable to fines; but such fines if above one hundred rupees were not to be enforced by the inferior courts; forfeiture and confiscation of the property of felons was to depend on the Nizamut Adawlut. Stringent penalties were enacted against dacoits; and threats of dismission or fines and promises of rewards were held forth to the thannadars and pikes.

15. By these arrangements, it will be observed, the judicial administration was alone affected; the law itself remained the same, with the exception of an additional and more severe provision respecting dacoity; and with the system of police no interference was attempted.

1773. 16. In the following year we find it a matter of consideration with the President and Council, whether the decree of the Nizamut Adawlut, after having received the confirmation of the Nazim, should be carried into execution precisely in the terms of his warrant; or whether the government should interfere in adding to, or commuting, the punishment, in cases wherein it appeared inadequate to the crime or ineffectual as a check. And the result was the appointment of the daroga of the Nizamut Adawlut, which court had previously been removed to Calcutta, "to affix the seal of the Nazim, and the signature on his behalf to warrants issued for the execution of sentences approved by the court," and a power vested in the President "to superintend him in the exercise of this office, as well in revising sentences of the Adawlut, as in passing the warrants and affixing the seal." However beneficial the control over the administration of criminal justice thus entrusted to the President, a short experience proved that it imposed a labor and involved a responsibility, which
1775. it was inconvenient to him to sustain; and consequently in October 1775, the Nizamut Adawlut was removed back to Moorshedabad, and the uncontrolled administration of criminal justice was confided to the Naib Nazim, by whom foujdars, assisted by persons versed in the Mahomedan law, were appointed to superintend the criminal courts in the several districts, and to apprehend and bring to trial offenders against the public peace.

Police, 1774. 17. In the meanwhile, April 1774, the police establishment had been remodelled by Mr. Hastings with the concurrence of his Council. The collectors and aumils had been acting as magistrates, but the want of an efficient police had thus early shown itself in the "increased confidence of the dacoits," and in the difficulty with which government obtained "intelligence of such events as related to the peace of the country." These evils were ascribed by Mr. Hastings to the abolition of the foujdary jurisdiction of the zemindars; to the resumption of the chakeran land, and the employment by the farmers of the servants, allowed to them by government solely for the business of their collections; and to the farming system, which removed the claim on the zemindars formerly possessed by the public from immemorial usage to the restitution of all damages and losses sustained from robbers. The remedies adopted for the removal of these disorders were that thannadars were appointed to the fourteen districts, into which Bengal was divided, for the various purposes of police; that the landholders and officers of the collections were enjoined to afford them all possible assistance in the discharge of their duties; that the land servants allowed for their respective districts were placed under the absolute command of the foujdars; that the chakeran lands were again applied to their original design; that the foujdars were enjoined to assist each other in their respective jurisdictions; that an office for the superintendence of the foujdars was established under the control of the President; that the landholders were made responsible for losses sustained by their neglect to assist the foujdars; and that all persons convicted of abetting or conniving at the practices of robbers were to be adjudged equally criminal with them, and to be punished by death.

18. On the 6th April 1781, it was declared that this system had by experience been found not to produce the good effects intended by the institution; the general establishments therefore both of the foujdars and thannadars were abolished by a resolution of the Governor General and Council; and the English judges of the several civil courts, being Company's covenanted servants, "were invested with the power, as magistrates, of apprehending dacoits and persons charged with the commission of any crimes or acts of violence, within their respective jurisdictions." 1781.

19. They were not however empowered to try or punish such persons; nor to detain them in confinement; but "were to send them immediately to the daroga of the nearest foujdarry court with a charge in writing, setting forth the grounds on which they had been apprehended." Provision was at the same time made for cases "where, by especial permission of the Governor General and Council, certain zemindars might be invested with such part of the police jurisdiction as they formerly exercised under the ancient Mogul government."

20. In such cases, the judge of the Dewanny Adawlut, the daroga of the foujdary court, and the zemindar, were to exercise a concurrent authority for the apprehension of robbers and all disturbers of the public peace. The better to enable the government to observe the effects of the regulations thus introduced, and to watch over the general administration of criminal justice throughout the provinces, a separate department was established at the presidency, under the immediate control of the Governor General, to receive monthly returns and reports from the judges, zemindars, and the Nazim; to arrange which, and to maintain "an effectual check on all persons employed in the administration of justice, as well as for such other purposes as his experience might suggest," an officer was appointed to act under the Governor General, with the title of Remembrancer of the Criminal Courts.

21. These provisions proved inadequate; they contained one capital defect; the power of the English magistrates over the zemindars and other landholders was not only inefficacious in general, and the course of justice therefore weak and uncertain, but "the regulation which vested the apprehension of all offenders in the magistrates without permitting them to interfere in any respect in the trials, gave rise to a new evil. The magistrates being obliged to deliver over to the darogas of the foujdary courts, and to that officer's prison, all parties charged with a breach of the peace however trivial, and a considerable time often elapsing before they were brought to trial, many of the lowest and most indigent classes of people were frequently detained for a long period in confinement, where the length of their sufferings very often more than equalled their demerits."

22. In June 1787, therefore, a new regulation "for the administration of justice in the criminal courts in Bengal, Bahar, and Orissa," was passed by the Governor General in Council; and at the same time the offices of judge, collector, and magistrate, (except in the cities of Dacca, Moorshedabad, and Patna) were united in the same person, but under distinct rules for his guidance in each capacity. By this regulation it was made the duty of the magistrate "to apprehend all murderers, robbers, thieves, house-breakers, or other disturbers of the peace, and to send them to take their trial, accompanied with a written charge in the Persian language, to the nearest foujdary court." He was further "invested with power to 1787.

hear and determine without any reference to the foujdary courts, all complaints or prosecutions brought before him for petty offences, such as abusive language or calumny, inconsiderable assaults or affrays, and to punish the same when proved by corporal punishment not exceeding 15 ratans, or imprisonment not exceeding the term of 15 days; but in all cases affecting either the life or limbs of the party accused, or subjecting them to a greater punishment than that above specified, the case was to be remitted, as above prescribed, to the nearest criminal court. In the case of groundless and vexatious complaints, the magistrate was authorized to inflict a fine not exceeding 50 or 200 rupees, according to the supposed wealth of the offender, the distinctions being the same as those since preserved in Section 8, Regulation IX. 1793. The daroga of the foujdary adawlut was declared to be totally independent of the magistrate, as far as related to the trial of causes, but subject in every respect to the Naib Nazim. Various rules for the guidance of the magistrates and the foujdary courts were at the same time enacted;—all complaints with the orders upon them were to be recorded in the magistrate's office, both in English and Persian, copies of which with the result of each case detailed in a given form were to be sent monthly to the remembrancer of the criminal courts;—the magistrate was not to detain in confinement beyond 2 days any person accused of an offence not within his competency to try;—he was to inspect the jails, which were under the care of the daroga, and to report thereon to the Governor General, "that the necessary representations might be made to the Naib Nazim;"—a report was to be made to government of any landholder committed for trial; and European British subjects were to be committed under certain rules to the Supreme Court. It was declared at the same time that "all Europeans, not British subjects, were equally amenable with the natives to the authority of the magistrate within his own district, and to the foujdary court to which they might be committed." The darogas were directed to transmit to the Naib Nazim copies of their proceedings at large, and to furnish him with various returns regarding the jail and the maalk-hana; and they were to deliver to the magistrate, for submission to the Governor General, monthly statements of the cases decided by them, and of the disposal of prisoners committed to them for trial. The officers of the foujdary courts were to be appointed by the Naib Nazim, and were required to hold courts at least three times a week throughout the year. Other provisions were added regarding the establishments allowed for the various courts, and the manner in which the bills for all expences were to be drawn.

23. The power thus vested in the magistrates to take cognizance of petty offences, obviated in some degree the hardship and inconvenience, which had before been experienced from the necessity of delivering over for trial to the darogah of the foujdary court all parties charged with a breach of the peace however slight, or any other criminal act however trivial in its nature and consequences. But as all crimes of consequence were still exclusively cognizable by the Naib Nazim and his subordinate officers; as the sentences of the Nizamut Adawlut were final and not notified to the Governor General until they had been carried into execution; as the judges and officers of the inferior criminal courts were appointed by the Naib Nazim; and as he possessed an almost exclusive control over those courts and their proceedings; many defects in the Mahomedan law, and abuses in the ad-

ministration of it, were left unremedied, and placed beyond the control and ameliorating influence of those who were alone willing to suppress them. The Court of Directors had desired in their primary instructions to Lord Cornwallis in 1786, that "the trial and punishment of offenders against the public peace should be left with the established officers of the Mahomedan jurisdiction, who were not to be interfered with beyond what the influence of the British Government might effect through occasional recommendations of forbearance to inflict any punishment of a cruel nature." But his Lordship found himself compelled very early to bear testimony to the inefficacy of such measures "to prevent, on one hand, the cruel punishments of mutilation, which are frequently inflicted by the Mahomedan law, and on the other to restrain the spirit of corruption, which so generally prevails in native courts, and by which wealthy offenders are generally enabled to purchase impunity for the most atrocious crimes." In conformity with this opinion, the Governor General in Council determined in December 1790, to introduce an entirely new system, and to take into his own hands the superintendence of the administration of criminal justice throughout the provinces.

Right of Government to alter the Mahomedan law

24. But before detailing the provisions which introduced this very important change, it seems useful to note the argument from which he deduced, that government held a right legally sanctioned to alter the Mahomedan law: it is clearly stated in a minute by Lord Cornwallis dated December 1st 1790, and it is worthy of remark that the framers of the celebrated "Fifth Report," sanctioned by the House of Commons in 1812, have adopted his Lordship's opinions, and even the words in which they were expressed. He writes: "With a view to ascertain more particularly the nature and causes of the defects (in the administration of criminal justice), and to collect the necessary information for remedying them, I directed some queries to be stated to the magistrates of the several districts, from their answers to which it will appear that the evils complained of proceed from two obvious causes: first, the gross defects in the Mahomedan law; and secondly, the defects in the constitution of the courts established for the trial of offenders. A provision against the first of these defects cannot otherwise be made than by our correcting such parts of the Mahomedan law as are most evidently contrary to natural justice and the good of society. That this government is competent to such an amendment of that law, as may appear thus essentially necessary, cannot, I think, admit of a doubt; since being entrusted with the government of the country, we must be allowed to exercise the means necessary to the object and end of our appointment; besides that we appear to possess a sufficient legal recognition of the right in question from this, that the alterations made in the established Mahomedan law of the country by the first code of judicial regulations of 1772, and more particularly that entire alteration, and new and very severe provision therein contained, for the punishment of dacoits, together with the superintendence and control over all the new criminal courts, which the said regulations vested in the Company's covenanted servants, stand both fully submitted to parliament in the sixth report of the committee of secrecy, already quoted, as a discretional Act of legislation by the President and Council in the year 1772; and yet so far was the parliament from disapproving thereof, or limiting in any respect the authority of our government in India, that with this information before it, and having these reports as the ground work of the law then passed, the Act of the 13th George

III. Chapter 63, Section 7, vests the ordering, management, and government, of all the territorial acquisitions and revenues in the kingdoms of Bengal, Behar, and Orissa, in the Governor General and Council, for such time as the territorial acquisitions and revenue shall remain in the possession of the said Company, in like manner (as the said Act recites,) to all intents and purposes whatever, as the same now are, or at any time heretofore might have been, exercised by the President and Council, or select committee, in the said kingdom. And as it was then before the legislature that the President and Council had interposed, and altered the criminal law of the country, such alterations, and all future necessary amendments thereof, appear, by the above clause, to be legally sanctioned and authorized."

25. It is necessary only to add to this that all subsequent Acts of Parliament, which have entrusted to the Government of India renewed or increased powers of enacting laws, have in no way restricted them in amending the Mahomedan criminal law. In the conclusion of the minute quoted above, Lord Cornwallis proposed to introduce four modifications of that law by a formal enactment; first, that the apparent intention of a murderer, and not the manner or instrument of perpetration, should constitute the rule for determining his punishment; secondly, that in all cases of murder the relations of the deceased should be debarred from pardoning the offender, and that the law should be left to take its course without any reference to their wishes upon all persons convicted thereof;—thirdly, that other punishments should be substituted for mutilation; and fourthly, that heinous offenders should be admitted to become witnesses against each other in the manner of King's evidence in England. Three out of the points which he thus brought forward, as those most repugnant to the principles, or inadequate to the ends, of justice, were the same as those, which Mr. Hastings had advanced in 1773, as reasons for that system of interference with the decrees of the Nazim, which he instituted and superintended;—but as they had never been formally abrogated, the Naib Nazim had doubtless considered as of no effect such innovations in practice on the prescribed rules of the Mahomedan law.

1790. 26. It seems unnecessary to follow Lord Cornwallis in the observations which he recorded on the second defect above mentioned, viz., the imperfect constitution of the criminal courts, because they must be generally obvious to all, who consider the facilities to a dishonest tampering with justice, and the unavoidable delay between the primary investigation by the police-magistrate and the final sentence by the Naib Nazim, which such a system necessarily produced. The correctness of his conclusion, that "the future control of so important a branch of Government ought not to be left to the sole discretion of any native, or indeed of any single person whomsoever," is sufficiently apparent. As such control must necessarily be exercised by the Government itself, and as it is "essential for the prevention of crimes, not only that offenders should be deprived of the means of eluding the pursuit of the officers of justice, but that they should be speedily and impartially tried when apprehended," it was determined to create a new machinery. Judges of circuit were appointed to the duties hitherto performed by the foujdaree darogas, and the place of the Naib Nazim was supplied by the Governor General and Council.

27. By the regulations passed on the 3rd December 1790, the court of Nizamut Adawlut was again removed from Moorshedabad to Calcutta, the duties of the court being undertaken by the Governor General and the members of the Supreme Council, assisted by the

local cauzy of Bengal, Behar and Orissa, and two mufties; and a register was appointed for the conduct of the executive business of the court, the office of the remembrancer being merged therein. The powers of the court were declared to be those "lately vested in the Naib Nazim;" and their decisions were in all cases to be regulated by the Mahomedan law, except as far as the restrictions passed in accordance with Lord Cornwallis's two first propositions, noted above; but the applicability of the law to the circumstances of the case was to be determined by the cazee-ool coozat and the mooftees.

28. Four courts of circuit, superintended respectively by two covenanted civil servants of the Company, and each having a cazee and mooftee to assist the judges and to expound the law, as well as an executive officer called the register, were at the same time established for the trial of offences not punishable by the magistrate; and they were directed to hold two general jail deliveries annually at the stations of the several magistrates within their divisions. In cases of acquittal, and of punishment less than death, or imprisonment for life, in which the judges of the court of circuit might approve of the futwa of their law officers, they were empowered to pass a final sentence; but in cases of death or perpetual imprisonment, as well as in all cases where the judges might "see cause to disapprove either on the ground of the trial or the futwa," they were required to transmit their proceedings for the final sentence of the Nizamut Adawlut. Rules of practice were at the same time enacted for the various functionaries; in which all the provisions of the preceding regulation of 1787, applicable to the new system, were re-enacted; and further, a regular system of investigation was prescribed to the magistrate and the superior courts in all complaints; the whole of the proceedings being committed to writing. Murder, robbery, theft, and house-breaking were at the same time declared to be unbailable offences; and French subjects were placed on the same footing as European British subjects.

29. The regulation thus enacted continued in force, with a few alterations and additions until 1793. But as the whole was embodied in the regulations published in that year, and still forms a part of the existing code of laws, it is unnecessary to detail here the various improvements which time and experience produced.

30. In December 1792, the police system was entirely remodelled; it was found, that "the clause in the engagements of the landholders, by which they were bound to keep the peace and, in the event of any robbery being committed in their respective estates, to produce both the robbers and the property plundered, had become not only nugatory, but in numerous instances had proved the means of multiplying robberies and other disorders, from the collusion which subsisted between the perpetrators of them, and the police entertained by the landholders." All powers were therefore taken away from the landholders; the country was divided into jurisdictions of about ten coss square; and a darogah with an establishment of officers was appointed to each. The regulation, which introduced this system, was republished, with some slight modifications, in the following year, as part of the permanent code of Bengal, Reg. XXII, 1793; and it is therefore needless to advert further to its provisions in this place. Police, 1792

31. The system of internal administration, thus adopted in 1793, referred only to Bengal, Behar and Orissa. We must therefore briefly advert to the other provinces and portions of territory over which the British rule now extends.

Benares.

32. In the province of Benares, which was ceded to the Company in May 1775, the administration of justice was committed, subject to the control of the zemindar, to the aumils or native collectors of the revenue, who were guided, in the exercise of this trust, chiefly by unwritten custom. In October 1781, the British Government first interfered in the interior administration of the province, and appointed a chief magistrate to the superintendence of a civil and criminal court, and a cutwalee, or office of police, in the city of Benares. He was authorized to frame rules of practice for these courts, subject to the approbation of the Government at Calcutta, to whose authority alone he was subject. In 1788, courts of judicature were established, under the superintendence of native magistrates, in the towns of Ghazeepore, Juanpore, and Mirzapore; and a moolkee (or country) foujdaree adawlut was erected with a criminal jurisdiction over the whole province of Benares, with the exception of the city and the three towns above-mentioned. In all these courts (with the exception of cases which had relation to caste or marriage amongst the Hindoos) the futwas were directed to be delivered in conformity to the Mahomedan law, and the resident at Benares was vested by the Governor General in Council with authority to superintend, revise, and sanction their proceedings, except in the case of sentences of a capital nature or inflicting any severe punishment. The resident was likewise authorized to exercise the powers of magistrate throughout the province, with authority to apprehend offenders, and to commit them to the criminal courts for trial. It being deemed objectionable to condemn brahmins to capital punishment within the province, a rule was passed in 1790, declaring all persons of that caste, condemned to death under the Mahomedan law, liable to transportation beyond sea. Certain other special rules regarding brahmins were promulgated; as well as the same amendments of the Mahomedan law as had already been introduced into the lower provinces. These minor reforms had been effected with the consent of the Rajah, who still retained a nominally sovereign authority; but on the 27th October 1794, an agreement was made with him, by virtue of which it was settled that the Governor General in Council should "introduce the same system and rules for the administration of justice, and for the concerns of the revenue, as were, in 1793, established within the provinces of Bengal, Behar, and Orissa;" and accordingly the same code of criminal law was extended, with little alteration, to the whole province of Benares; courts were constituted on similar principles, and a similar system of police was introduced, by the regulations passed on the 27th March 1795.

Ceded provinces.

33. In November 1801, the Nawab Vizeer ceded to the Company by treaty certain districts in Oude, which have since been divided into the following zillahs; Moradabad, Bareilly, Etawah, Furruckabad, Cawnpore, Allahabad, and Goruckpore. At first (says the fifth report) "these districts were placed under the superintendence of a Lieutenant Governor and Board of Commissioners, to whom were confided the settlement of the revenue and the formation of a temporary scheme of internal administration, which was intended to continue, till sufficient information should be acquired of the circumstances of the country, to warrant the establishment of a more permanent system. Under this temporary provision, the European civil servants of the Company, acting under the orders of the Lieutenant Governor, and stationed in the districts into which the acquired territory was divided, possessed individually the entire civil authority, officiating as collectors of the revenue and

judges and magistrates within their respective limits." The commissioners were required to assist the Government in the formation of regulations; and also "to superintend the administration of the laws over a great extent of country, and over a race of people, unaccustomed to any regular system of order or law, and habituated to commit the utmost excesses of violence and oppression." The administration thus formed continued however for little more than a year; when, as the objects which the Government had had in view appeared to have been fulfilled, the commission was dissolved; and the Bengal regulations were introduced into the ceded provinces, being republished with such modifications, as the condition of the natives rendered advisable, under date the 24th March 1803.

Conquered provinces.

34. The district of Bundlecund was ceded to the Company by the Peshwah on the 16th December 1803; and on the 30th of the same month, Dowlut Rao Scindiah ceded "certain territories, forming part of the Dooab, or country situated between the rivers Ganges and Jumna, and on the right bank of the Jumna." These were divided into the Zillahs of Bundlecund, Panniput, Seharunpore, Allyghur, and Agra, by Section 3, Regulation IX. 1804; but Zillah Panniput, which included the city of Delhi, and the territory situated on the right bank of the river Jumna, was afterwards (by Section 4, Regulation VIII. 1805) assigned to his Majesty Shah Alum, and declared not subject to any of the general laws or regulations of the British Government. During the continuance of the Mahratta war, these provinces were placed under the control of the Commander-in-Chief, Lord Lake, whose orders the civil servants entrusted with the immediate charge of them were directed to obey; but by Regulation IX. 1804, (passed on the 14th December,) the government extended to these provinces the criminal regulations, which had recently been introduced into the ceded districts of Oude and the vicinity, and of which the similar habits of the people rendered little modification necessary.

Sonk, Sonsa, and Sahar.

35. The pergunnahs of Sonk, Sonsa, and Sahar, in zillah Agra, parts of the conquered provinces, (as those ceded by the Peshwah and Scindiah were officially designated,) were subsequently given up to the Rajah of Bhurtpoor; but were afterwards resumed, and finally annexed to the Company's territories by treaty, dated the 17th April 1805. They were joined to zillah Agra, and the criminal laws extended to them by Regulation XII. 1806. In the same manner, the pergunnah of Goberdhun, also part of the conquered provinces, was granted to Koour Luchmun Singh, a son of the same Rajah; but was afterwards resumed, and annexed to the district of Agra on the 25th January 1826, by Regulation V. of that year.

Goberdhun.

Cuttack.

36. On the 17th December 1803, the province of Cuttack, "including Balasore, and the other dependencies of the said province," were ceded to the Company by the Rajah of Berar, Raghoojee Bhoonsla; and by Regulation IV. 1804, (passed on the 3rd May) "the regulations for the administration of justice in criminal cases, and for the guidance of magistrates in the provinces of Bengal and Behar, and in the part of the province of Orissa heretofore subject to the dominion of the British Government" were extended thereto. Certain special rules for the administration of the police were passed at the same time, and also in Regulation XIII. 1805; and in the operation of these were included the pergunnahs of Puttespore, Kummardichour, and Bograe, in the zillah of Midnapore.

Dehra Doon.

37. The tract of country, called Dehra Doon, was surrendered to the Company by the Rajah of Nepaul on the 15th May 1815; and annexed to the district of Saharunpore by Regulation IV. 1817, passed on the 28th February; by which also it was made subject to the same laws and regulations as the ceded and conquered provinces. But the administration of certain portions of territory, which were ceded by the same treaty, including the province of Kumaoon, Jounsar, Bawur, Poondur, and Sundokh, and other small tracts situated between the rivers Jumna and Sutlege, was entrusted to British officers acting under the immediate instructions of the Governor General in Council; and special rules were enacted in Regulation X. 1817 for the administration of justice, and for the appointment by the Governor General in Council of a special commissioner for the trial of persons charged with the commission of heinous offences therein. In 1825 it was declared, that "local circumstances rendered it expedient to transfer the Dehra Doon to the jurisdiction of the commissioner in Kumaoon, and also to place under the same authority the pergunnah of Chandnee," which was then attached partly to Moradabad and partly to Saharunpore; and by Regulation XXI. of that year, the provisions of Regulation X. 1817 were declared applicable thereto. By Regulation V. 1829, however, the Dehra Doon was again separated from the jurisdiction of the commissioner in Kumaoon, and the provisions of Regulation X. 1817 were declared no longer applicable to it: such parts of the latter regulation also as provided for the appointment of a special commissioner were rescinded: and it was enacted that "the administration of criminal justice in the Dehra Doon, and in the reserved tracts between the Jumna and Sutlege, should thereafter be conducted under such rules and instructions as the Governor General in Council might please to issue for the guidance of the officers to whom it might be entrusted." Finally, by Act X. 1838, the remaining part of Regulation X. 1817, was repealed; and the functionaries of the province of Kumaoon were placed under the control and superintendence in criminal cases of the Nizamut Adawlut, who were to exercise it in conformity with the instructions of Government.

Kumaoon, &c.

Handya.

38. The pergunnah of Handya was ceded to the Company by the Nawab Vizeer on the 1st May 1816; and by Regulation XVIII. of that year, passed on the 16th August, it was annexed to the Zillah of Allahabad, and declared subject to the laws and regulations established for the internal administration of that district.

Khundeh, &c.

39. On the 1st November 1817, the elakah of Khundeh, appertaining to the pergunnah of Mahoba, together with certain villages belonging to the pergunnah of Choorkee, on the right bank of the Jumna, were ceded to the Company by Nana Govind Row, and were in like manner annexed to the district of Bundlecund by Regulation II. 1818, passed on the 31st March.

Mahomedan criminal law.

40. There remains only to explain the nature of the Mahomedan criminal law, by the principles of which, except in so far as they have been expressly rejected or amended by the regulations of Government, the criminal courts established by the Company are required to regulate their decisions. The elements of this law are taken from the Koran; but there are so few passages therein which are applicable to ordinary cases, that the administrators of the law are obliged to have recourse to numerous commentators, as well as to the soonnut, or rules of conduct, deduced from traditions of the oral precepts, actions, and decisions of

the prophet.(b) The two great sects of Mahomedans, the Shya and Soonies, frequently differ both in interpreting the Koran, and in admitting or rejecting the traditions; but the authoritative writings of Aboo Huneefah, and his two disciples, Aboo Yoosuf and Imam Mahommed, who were Soonies, govern all judicial decisions in India. If a difference of opinion exists between these authorities, judgment is to be given according to the decision in which the master and one of his disciples agree; or if both the disciples dissent from their master, according to that which appears most consonant to reason, or the practice of modern days, or founded on the best authority. In judicial decrees however the doctrine of Aboo Yoosuf is considered more sound than that of his fellow disciple. When no precedent can be found, the Mahomedan judge is directed to abide by the decisions of subsequent lawyers; but if these also fail to afford a direct solution of any legal question, it is deemed not improper to resort to judgment, analogy, and reason.(c) The principles of penal justice comprised in the Mahomedan code are classed under three heads, viz. 1st, Kisas, or retaliation, including diyut or the price of blood; 2nd, Hoodood, or prescribed penalties; 3rd, Tazeer and Seasut, or discretionary correction and punishment. Under the first head are included offences against the person (called jinayat) as wounding, homicide, and murder. Under the second are ranged robbery (surika-i-kobra), theft (surika-i-soghra,) drinking wine (shoorb), adultery (zina), and slander of the same (kuzuf). And the third head comprises all crimes not expressly falling within the laws of Kisas and Hud, as well as such as, though comprehended within the general provisions of those laws, are specially excepted from the operation of them by some doubt, or legal defect (shoobah.) The offences, which fall under the heads of Kisas and Hoodood will be noticed hereafter in their proper places; but the principles of Tazeer and Seasut are of a more general nature, and it is more convenient to note here their general provisions.

Tazeer and Seasut.

41. Tazeer, in its primitive sense means prohibition or restriction, and is legally defined to be an infliction (akoobut), undetermined by law, on account of the right of God, as well as for the rights of individuals; or, in other words, for the ends of public, as well as private justice; and it is declared to be incurred by any offence, whether of word or deed, not subject to a specific legal penalty. Seasut, literally protection, is a word used to express the exemplary punishment, extending even to death which may be considered necessary to protect the community from atrocious and irreclaimable offenders. These terms include both objects proposed to be effected by punishment, correction and discipline; individuals are punished and reformed; others are deterred from committing the like offence, and the well-being of the community is improved.

(b) From the Atlantic to the Ganges, the Koran is acknowledged as the fundamental code, not only of theology, but of civil and criminal jurisprudence; and the laws, which regulate the actions and the property of mankind, are guarded by the infallible and immutable sanction of the will of God. This religious servitude is attended with some practical disadvantage; the illiterate legistator had been often misled by his own prejudices and those of his country; and the institutions of the Arabian desert may be ill adapted to the wealth and numbers of Ispahan and Constantinople. On these occasions, the Cadhi respectfully places on his head the holy volume, and substitutes a dexterous interpretation more apposite to the principles of equity, and the manners and policy of the times.—*Gibbon's Decline and Fall—Chap.* 50.

(c) It would be foreign to the nature of this sketch to notice the various oriental works on jurisprudence, which are esteemed by the lawyers, and which govern judicial decisions in India; but the reader, desirous of obtaining information regarding them, is referred to Harington's Analysis, to which I am indebted for the whole of this account of Mahomedan law.

Discretionary punishment.

42. In the case of offences against the community, the evidence of the prosecutor is admissible, or the offender may be brought to trial and punishment without any complaint from the party injured; but the judge alone is capable of remitting the punishment incurred. But in the case of offences against individuals, the plaintiff must himself or by deputy conduct the prosecution; and, though incompetent to bear testimony in his own cause, is at liberty to forgive the offence. In cases of the latter description, absent witnesses may appoint persons to give evidence for them; or, in defect of proof, the accused party may be put upon his oath. Tazeer, though allowed as a private right, cannot be inflicted without a judicial sentence; and though, for the full legal conviction of a Mahomedan, the evidence of witnesses of any other religious persuasion is not strictly admissible; nor of women, if the prosecution be of a public nature; yet Tazeer and Seasut may in all cases be inflicted upon strong presumption, whether arising from the credible testimony of men, or women, of whatever religion, or from circumstances which warrant a violent presumption of guilt, as well as upon the confession of the accused. And it is expressly declared that a conviction for Tazeer may be founded upon the depositions of the prosecutor and one credible male witness, in public cases; or in those of a private nature, upon the testimony of two men, or one man and two women. The punishments, which may be awarded upon a conviction for Tazeer, include private and public reprimands, and exposure (tusheer); a temporary sequestration of property, stripes, imprisonment, and even capital punishment, according to the rank and situation of the offender, or the nature of the offence.

43. The general doctrine of discretionary punishment has been clearly set forth in the preamble to Regulation LIII. 1803; and it will be fit to cite the passage at length. "The Mahomedan law vests in the sovereign and his delegates, the power of sentencing criminals to suffer discretionary punishment (under the legal denominations of Tazeer, Acoobut, and Seasut) in three cases. First, in the case of offences for which no specific penalty, of Hud or Kisas, has been provided by the law; being, for the most part, offences not of a heinous nature, the punishment of which is left discretionary, below the measure of the specific penalties, for the correction and amendment of the offender. Secondly, for crimes within the specific provisions of Hud and Kisas; when the proof of the commission of such crimes may not be such as the law requires for a judgment of the specific penalties, though sufficient to establish a strong presumption of guilt; or although the proof be such as is required for a sentence of Hud or Kisas, when such sentence is barred by a remission of the claim to retaliations in cases of Kisas; or by any of the special exceptions and scrupulous distinctions, which (under the general denomination of shoobah) are considered by the prevalent authorities of Mahomedan law to bar a judgment for the specific penalties of that law. Thirdly, for heinous crimes in a high degree injurious to society; and particularly for repeated offences of this description; which, for the ends of public justice (as expressed by the term Seasut) may appear to require exemplary punishment beyond the prescribed penalties; and with respect to crimes of this description, an unlimited discretion, extending to capital punishment, is admitted to have been left by the Mahomedan law to the sovereign authority of every country in which that law prevails, as well as to its judiciary delegates." Such being one of the leading principles of the law, the administration of it necessarily became arbitrary and uncertain, when committed to ineffi-

cient officers. The amount of injury suffered doubtless differs considerably in cases, which fall under the same denomination; and therefore it is impossible accurately to define each particular offence, and to appoint a specific punishment for every crime; but there are few individuals, and rarely to be found, to whom so wide a latitude in meting punishment can be entrusted, as is given by the Mahomedan law; and still smaller must be the number of those, whose minds are able to contract to the pointless intricacies and uncertain provisions of that code, and at the same time to expand to the noble duties of the judge and the great ends of criminal justice. And hence it was observed "in the adjudication of punishments under the discretion thus allowed, that the futwas of the Mahomedan law officers of the criminal courts were often governed by a consideration of the degree of proof against the party accused, rather than the degree of guilt, and criminality of the act, established against him; and the penalties awarded by them, in such cases, were either adjudged on insufficient proof of guilt, or were inadequate to the heinousness of the offence of which the prisoner was convicted." The law was amended in these points by the regulation from which these passages are quoted.

44. In the remaining pages of this work are detailed the provisions of the law now extant. To detail the various alterations and improvements, which experience has gradually introduced since the first formation of a code of law in 1793, would swell the bulk of this volume to an inconvenient size; and the advantages to the student would not, perhaps, compensate the practical man for the impediments, which such a course would raise to that facility for reference so much to be desiderated.

SECTION II.

OF THE REGULATIONS.

Principles on which the regulations are framed

45. "It is essential," says the preamble to Regulation XLI. 1793, "to the future prosperity of the British territories in India, that all regulations which may be passed affecting in any respects the rights, persons, or property of their subjects, should be formed into a regular code, and printed with translations in the country languages; that the grounds on which each regulation may be enacted, should be prefixed to it; and that the courts of justice should be bound to regulate their decisions by the rules and ordinances which those regulations may contain. A code of regulations framed upon the above principles will enable individuals to render themselves acquainted with the laws upon which the security of the many inestimable privileges and immunities granted to them by the British government depends, and the mode of obtaining speedy redress against every infringement of them; the courts of justice will be able to apply the regulations according to their true intent and import; future administrations will have the means of judging how far regulations have been productive of the desired effect, and, when necessary, to modify or alter them as from experience may be found advisable; new regulations will not be made, nor those which may exist be repealed, without due deliberation; and the causes of the future decline or prosperity of these provinces will always be traceable in the code to their source." In furtherance of these principles certain rules were passed, in accordance with which the regulations of

government are framed and translated; it would however be impertinent to give them a place in a work, which regards the administration rather than the enactment of laws.

Courts to be guided by them alone.

46. The civil and criminal courts of justice are to be guided in their proceedings and decisions by the regulations framed and transmitted to them by government, as directed in this regulation, and by no other.(a) *Beng.* Reg. XLI. 1793. sect. 13. *Ben.* Reg. I. 1795. sect. 4. *Ced. Prov.* Reg. I. 1803. sect. 13.

Construction by itself.

47. One part of a regulation is to be construed by another, so that the whole may stand.(b) *Beng.* Reg. XLI. 1793. sect. 19. *Ben.* Reg. I. 1795. sect. 4. *Ced. Prov.* Reg. I. 1803. sect. 19.

New regulation differing from old.

48. If a regulation is passed differing from a former regulation, either wholly or partially, the new regulation is to be considered as a virtual repeal of the old one, as far as it may differ from the latter, provided that the new regulation be couched in negative terms, or by its matter necessarily imply a negative. *Beng.* Reg. XLI. 1793. sect. 20. *Ben.* Reg. I. 1795. sect. 4. *Ced. Prov.* Reg. I. 1803. sect. 20.

Repealed regulation revived.

49. If a regulation that rescinds another regulation, is itself afterwards rescinded, the original regulation is to be considered as revived without any formal declaration to that purpose. *Beng.* Reg. XLI. 1793. sect. 21. *Ben.* Reg. I. 1795. sect. 4. *Ced. Prov.* Reg. I. 1803. sect. 21.

Promulgation.

50. A regulation is to be considered as promulgated from the date of the receipt of the English copy. C. O. 137 of vol. 2.

51. The date on which a regulation is received in an office should invariably be recorded thereon, the note being attested by the official signature of the presiding officer. Const. No. 566.

52. The production of a government gazette, containing an Act purporting to have been passed by the Governor General in Council, is to be held in all courts sufficient proof that such Act has been so passed. Act X. 1835.

Translations to be read publicly.

53. On receipt of translations of the regulations in the country languages, judges and magistrates are to cause them to be publicly read in their cutcherries; and to require the native pleaders of their respective courts to take copies of the translations of any regulations, which relate, directly or indirectly, to the administration of civil justice. *Ced. Prov.* Reg. VIII. 1805. sect. 31. *Beng. and Ben.* Reg. XI. 1806. sect. 12.

Instance of extent of application.

54. No regulation is considered to extend, either wholly or in part, to the province of Benares, unless the title to the regulation, or the regulation itself, or some other regulation, declares the whole or a part of it to extend to that province. Reg. I. 1795. sect. 4.

(a) "Penal statutes must be construed strictly." *Blackstone.*—"The judge is not to judge according to his own discretion only; he must strictly adhere to the letter of the law; and no constructive extension can be admitted; and, however criminal a fact might in itself be, it would pass unpunished if it were found not to be positively comprehended in some one of the cases provided for by the law. The evil that may arise from the impunity of a crime,—that is an evil, which a new law may instantly stop,—has not by the English laws been considered as of magnitude sufficient to be put in comparison with the danger of breaking through a barrier on which so materially depends the safety of the individual." *De Lolme.*

(b) Ut res magis valeat, quam pereat. *Blackstone, Introd.* § 3.

55. In a case of supervenient insanity after the commission of murder by the prisoner while sane, the court did not think fit to apply the rule contained in Reg. IV. 1822, which would have been disadvantageous to the prisoner, as the offence was committed long prior to that enactment. N. A. R. vol. 2, page 89.

Examples of construction.

56. The court would not apply the provisions of Reg. IV. 1822 (unfavorable to the prisoner) to an offence committed subsequently to the date of its being in force, but prior to the probable date of its receipt at the place where the offence was committed. N. A. R. vol. 2, page 233.

57. Held that the rule contained in Section 7, Reg. XII. 1825,—which declared that the inadequacy of a prescribed sentence was not a legitimate ground for referring the case to the higher court, and was so far in favour of a prisoner,—was applicable to the case of a prisoner whose offence was committed prior to the promulgation of that enactment. N. A. R. vol. 3, page 107.

58. An inferior court may decide a case, which by the enactments in force at the time of the apprehension of the prisoner is within his competency, although, under the laws existing at the time of the commission of the offence, it must have referred the case to a superior court,—provided the new enactment does not enhance the punishment. Const. Nos. 594 and 298. N. A. R. vol. 3, page 107.

59. The sentences of the courts are to be regulated by the Mahomedan law, excepting in cases in which a deviation from it is expressly directed by any regulation. Reg. IX. 1793. sect. 54 and 74.

Sentences to be regulated by Mahomedan law.

60. But any person, not professing the Mahomedan faith, when brought to trial on a commitment for an offence cognizable under the general regulations, may claim to be exempted from trial under the provisions of the Mahomedan criminal code. In such case the prisoner is to be tried with the assistance of a punchaet, assessors, or a jury, and the futwa of the law-officer is to be dispensed with. Reg. VI. 1832. sect. 5.*

Unless any one not a Mahomedan claims exception.

* *v. Infra, Section of sessions.*

61. In cases where a stated penalty is prescribed for an offence, as well by the regulations as by the Mahomedan law, the provisions of the latter are superseded. N. A. R. vol. 1, page 262.

Mahomedan law superseded by regulations.

62. If in any case not provided for by the regulations, the Mahomedan law appears repugnant to justice, the Court is notwithstanding to adhere thereto, if in favor of the prisoner, in the case before them; or, if against the prisoner, to mitigate the punishment or recommend a pardon; and at the same time to propose a new regulation to provide against a recurrence of the case. *Beng. and Ben.* Reg. IV. 1797, sect. 4. *Ced. Prov.* Reg. VIII. 1803, sect. 11.

Public officers are to propose new regulations for enactment, as occasion prompts, or circumstances require.

63. The Court is to propose a regulation to fix and declare the specific punishment of any crime of magnitude, which may be found not to have been specifically provided for, either by the Mahomedan law or by the regulations, and which may appear to call for an express denunciation of the penalty to be incurred by committing the same. Reg. LIII. 1803, sect. 7, cl. 3.

64. Magistrates, session-judges, and judges of the Nizamut Adawlut are respectively empowered to propose regulations regarding any matters coming within their cognizance.

They are to be drafted in the form and agreeably to the rules prescribed in Reg. XLI. 1793, and submitted through the intervening courts, with their remarks thereon, to the Governor General in Council, who is to reject, or adopt them, or to pass such other regulation as may appear to him proper. *Beng.* Reg. XX. 1793. *Ben.* Reg. XXIX. 1795. *Ced. Prov.* Reg. IX. 1803.

65. It is the wish of Government, that whenever European officers perceive any thing in the general system of laws, or in their practical application, calculated to injure the public interests, they should not be restrained from bringing the subject forward merely by the consideration that the case does not fall within the scope of their immediate functions. C. O. S. D. A. April 22nd, 1825.

CHAPTER II.

OF THE NATURE OF CRIMES, OF PERSONS CAPABLE OF COMMITTING CRIMES, AND OF PRINCIPALS AND ACCESSARIES.

66. It is the custom to preface works on criminal law with remarks on the nature of crimes,—on persons capable of committing crimes,—and on principals and accessaries. I desire to follow this example; but on these subjects neither the Mahomedan law, nor the regulations, contain any full and precise rules; and I have therefore deemed it best, in treating thereof, to supply first the principles of English law as laid down by Blackstone, Russell, &c., secondly the corresponding definitions of Mahomedan law given in the Hedaya, and lastly what is to be found in the regulations. It is not indeed easy to distinguish the principles on which the rules of Mahomedan law have been founded, or to reconcile the differences which occur therein. The cause is evident; the law-giver adapted each ordinance to the peculiar case, which called for its enunciation; and the law administrators habitually deduced general precepts from a casual decision or dictum of the prophet or other acknowledged authority; comprehensive laws, regarding the species and genera of crimes, would ill grow from individual circumstances; and commentators and magistrates have found ample exercise for their ingenuity and sophistry in applying the isolated passages of the koran, and in resolving opponent doctrines into rules of general application. From this disregard of generic distinctions ensues a defect in classification; and without accurate classification definitions can never be framed.

SECTION I.

OF THE NATURE OF CRIMES.

English Law.

General definition.

67. The general definition of a crime is "an act committed or omitted in violation of a public law, either forbidding or commanding it." In the language of the English law offences are, with few exceptions, divided into two classes, felonies and misdemeanors. *Felony* is defined to be an offence which occasions a total forfeiture of either lands or goods, or both, at the common law; and to which capital or other punishment *may be* superadded according to the degree of guilt. The word *misdemeanor*, in its usual acceptation, is applied to all those crimes and offences, for which the law has not provided a particular name; and they may be punished according to the degree of the offence by fine or imprisonment, or both. A misdemeanor is in truth any crime less than a felony; and the term comprehends all indictable offences, which do not amount to felony; as perjury, battery, libels, conspiracies, and public nuisances. So long as an act rests in bare intention it is not punishable; but immediately when an act is done, the law judges not only of the act done, but of the intent with which it is done; and if accompanied with an unlawful and malicious intent, though the act itself would otherwise have been innocent, the intent being criminal, the act becomes criminal and punishable. Thus an attempt to commit a felony is, in many cases, a misdemeanor; and an attempt to commit even a misdemeanor has been decided in many cases to be itself a misdemeanor. And the mere soliciting another to commit a felony is a sufficient act or attempt to constitute the misdemeanor. All that is necessary is an act charged, and a criminal intention joined to that act.

Misprision of felony.

68. Misprision of felony is taken for a concealment of felony, or a procuring the concealment thereof; and silently to observe the commission of a felony, without using any endeavours to apprehend the offender, is a misprision, a man being bound to discover the crime of another to a magistrate with all possible expedition. If this offence were accompanied with some degree of maintenance given to the felon, the party committing it might be liable as an accessary after the fact.

Distinction between public and private wrongs.

69. The distinction of public wrongs from private, of crimes and misdemeanors from civil injuries, seems principally to consist in this: that private wrongs, or civil injuries, are an infringement or privation of the civil rights which belong to individuals, considered merely as individuals; public wrongs, or crimes and misdemeanors, are a breach and violation of the public rights and duties, due to the whole community, considered as a community, in its social aggregate capacity. As if I detain a field from another man, to which the law has given him a right, this is a civil injury, and not a crime; for here only the right of an individual is concerned, and it is immaterial to the public which of us is in possession of the land; but treason, murder, and robbery, are properly ranked among crimes; since, beside the injury done to individuals, they strike at the very being of society, which cannot possibly subsist, where actions of this sort are suffered to escape with impunity.

Mahomedan Law.
General principle.

70. The same principles are in a great measure acknowledged by Mahomedan law. Mr. Mill observes, that "in the selection of the acts, which shall be accounted offences, there is great uniformity all over the globe"; but it seems that the Mahomedan code loses sight of the distinctions usually drawn between civil and criminal law, and embraces a range somewhat wider than the English. It considers offences as divided into two classes, those against the law of God, and those against individuals; and declares that the punishment of the former is due to the right of God, of the latter to the right of the individual; that the one cannot be remitted by the act of any individual; while the other may be absolved by the person injured. Indeed in all cases it seems that the conviction and punishment of the offender have at least a negative dependance on the prosecutor; as, for instance, in a case of theft, which is an offence against the right of God, the thief cannot be punished even on his own confession unless the person robbed comes forward to prosecute. But it necessarily follows that the end and purpose of criminal law are forgotten, if a breach and violation of the public rights and duties, due to the whole community, may be forgiven by the individual on whom the injury more immediately falls, or if he alone is permitted to compound the offence which has outraged society in its aggregate capacity. The object of civil law ought to be to restore to a party injured his right if possible, or to give him an equivalent; the object of criminal law should be the prevention and punishment of public wrongs. Again, the Mahomedan law, in assuming to itself the vindication of the rights of God, observes offences, of which an English judge cannot take notice; for so every crime does not include an injury, since there are violations of the divine law, which are neither injurious to the public morals, nor prejudicial to an individual.

71. We have already adverted to the three principles of Mahomedan penal justice, viz. retaliation, stated penalties, and discretionary punishment. Under the two first of these heads certain offences are in a measure defined, and declared liable to certain penalties; but under the last, the nature and classification of the act impugned, as well as the measure of punishment proportionate thereto, are left to the discretion of the judge. He must decide according to his sense of justice, equity, and good conscience. The British Government, while instituting courts for the administration of this code, and making "provisions for determining the punishment to be adjudged by those courts in all cases wherein a discretion is left by the Mahomedan law," has thought proper to place them under but little further general restrictions: in some few cases offences have been defined and penalties prescribed. By Clause 7, Sec. 2, Reg. LIII. 1803, it is enacted, that—"if the crime of which a prisoner is convicted, and for which he is declared liable to discretionary punishment, shall neither have been specifically provided for by any regulation, nor by any stated penalty in the Mahomedan law; and the judge, before whom the trial may be held, considers the crime to have been established against the prisoner, and deserving of punishment," he may adjudge punishment within certain limits. So also the jurisdiction of the magistrate is confined, by Section 19, Reg. IX. 1807, only to those "criminal offences punishable under the Mahomedan law and the regulations;" and he is to adjudge punishment within certain limits; or, if he considers such penalty insufficient for the criminality of the offence, he is to commit the offenders to the sessions.

Regulation Law.

Session Judge.

Magistrate

72. It would seem that any act forbidden by the regulations, but for which no punishment is specified, is considered as a misdemeanor, and punishable accordingly at discretion under the general regulations. Const. No. 1305. **Misdemeanor.**

SECTION II.

OF PERSONS CAPABLE OF COMMITTING CRIMES.

English Law.

General principle dependant on want or defect of will.

73. All the pleas and excuses, which protect the committer of a forbidden act from the punishment which is otherwise annexed thereto, must be founded on the want or defect of will; for without the consent of the will human actions cannot be considered as culpable. To make a complete crime cognizable by human laws, there must be both a will and an act. An overt act, or some open evidence of an intended crime, is necessary in order to demonstrate the depravity of the will, before the man is liable to punishment: and as a vicious will without a vicious act is no civil crime, so on the other hand an unwarrantable act without a vicious will is no crime at all. So that to constitute a crime against human laws, there must be, first, a vicious will; and secondly, an unlawful act consequent upon such vicious will. The cases of want or defect of will seem to be reducible to four heads: 1st, infancy; 2nd, *non compos mentis;* 3rd, subjection to the power of others; 4th, ignorance, chance, and the like.

Infancy.

74. Infants, under the age of discretion, ought not to be punished by any criminal prosecution whatever. But this age of discretion must be regulated as well by the nature of each individual case, as by the strength of the delinquent's understanding and the degree of cunning shown in the perpetration of the offence charged. For one lad of eleven years old may have as much cunning as another of fourteen; and in such cases the maxim is that *malitia supplet ætatem.* Under seven years of age an infant cannot be guilty of felony, for then a felonious discretion is almost an impossibility in nature. On the attainment of fourteen years the criminal actions of infants are subject to the same modes of construction as those of the rest of society;—but between fourteen years and seven, though an infant is *primâ facie doli incapax,* and presumed to be unacquainted with guilt, yet this presumption will diminish with the advance of the offender's years, and will depend upon the particular facts and circumstances of his case. The evidence of malice, however, which is to supply age, should be strong and clear beyond all doubt and contradiction; but if it appear that the offender is *doli capax* and can discern between good and evil, he may be convicted and suffer death.

Non compos mentis.

Idiot.

Lunatic.

One deaf and dumb from birth.

75. It has been considered that there are four kinds of persons who may be said to be non compos. 1st, an idiot; 2d, a lunatic; 3rd, one made non compos by sickness; 4th, one that is drunk. The difference between the two former lies in this, that an idiot is one who has been a fool or mad from his birth, and never has lucid intervals; while a lunatic has occasional intervals of reason. One who is deaf and dumb from birth is in presumption of law an idiot, and the rather because he has no possibility to understand what is forbidden by law to be done, or under what penalties; but if it appear that he has the use of understanding,

as some of that condition discover by signs, then he may be tried and suffer judgment.

Non compos from sickness.

Persons made non compos mentis by sickness, and lunatics, are excused in criminal cases from such acts as are committed while under the influence of the disorder.

Drunkenness.

With respect to drunkenness, if it be voluntary, it cannot excuse a man from the commission of any crime, but on the contrary must be considered as an aggravation of whatever he does amiss;—yet if a person by the unskilfulness of his physician, or the contrivance of his enemies, eat or drink such a thing as causes phrenzy, he is excused;—and also if the phrenzy has become habitual and fixed, though contracted by the vice and will of the party, yet it puts the man in the same condition as if it were contracted at first involuntarily. In some cases, however, the state of the culprit may be taken into consideration, where premeditation is the principal point to be decided.

General principle.

Generally it seems that though if there be a total permanent want of reason, or if there be a total temporary want of it when the offence was committed, the prisoner will be entitled to an acquittal; yet if there be a partial degree of reason, and a competent use of it sufficient to have restrained those passions which produced the crime; if there be thought and design, a faculty to distinguish the nature of actions, to discern the difference between moral good and evil; then, upon the fact of the offence proved, the judgment of the law must take place.

Proceedings as to trial and judgment.

76. If a man in his sound memory commits a capital offence, and before arraignment for it he becomes mad, he ought not to be arraigned for it; because he is not able to plead to it with that advice and caution that he ought. And if, after he has pleaded, the prisoner becomes mad, he shall not be tried; as he cannot make his defence. If, after he be tried and found guilty, he loses his senses before judgment, judgment shall not be pronounced: and if after judgment he becomes of non-sane memory, execution shall be stayed; for peradventure, says the humanity of the English law, had he been of sound memory, he might have alleged something in stay of judgment or execution.

Subjection to the power of others, and compulsion.

Civil power.

Husband and wife.

77. Persons are excused from those acts which are not done of their own free will, but in subjection to the power of others, and through unavoidable force and compulsion. Though a law is contrary to religion and sound morality, yet obedience to it is sufficient extenuation of civil guilt before the municipal tribunal. In private relations, the principal case, where constraint of a superior is allowed as an excuse for criminal misconduct, is with regard to the matrimonial subjection of the wife to her husband; for neither a child nor a servant are excused the commission of any crime, whether capital or not capital, by the command or coercion of the parent or master. A wife shall not suffer punishment for committing theft or burglary, or other civil offences against the laws of society, by the coercion of her husband, or in his company, which the law construes a coercion. But she is punishable, if upon the evidence it appears that she was not under coercion, or acted voluntarily. So also she is guilty of all crimes which, like murder, are *mala in se*, and prohibited by the law of nature. But where the wife is to be considered merely as the servant of the husband, she will not be answerable for his breach of duty, however fatal, though she may be privy to his conduct. In all misdemeanors, and when the wife offends alone, she is responsible for her offence.

Fear of death, or bodily harm.

78. Threats and menaces, which induce a fear of death or other bodily harm, take away the guilt of many crimes and offences; but then such fear must be just and well-grounded;

and the excuse is not admitted in natural offences so declared by the law of God. If a man be violently assaulted, and has no other means of escaping death but by killing an innocent person, such fear and force does not acquit him of murder, for he ought rather to die himself than escape by the murder of an innocent person; but in such a case he may kill the assailant.

Choice between two evils.

79. Another species of necessity is where a person is compelled to choose between two evils, and chooses the least pernicious of the two. As where a civil officer wounds or kills persons resisting his authority, and preventing him from executing duties which he is bound to perform.

Ignorance or mistake.

80. The plea or excuse of ignorance applies only to ignorance or mistake of fact, and not to any error in point of law. For ignorance of the municipal law of the kingdom is not allowed to excuse any one that is of the age of discretion, and compos mentis, from its penalties when broken; on the ground that every such person is bound to know the law, and presumed to have that knowledge.(a) If a man, intending to kill a thief or house-breaker in his own house, by mistake kills one of his own family, this is not a criminal action; for here the deed and the will acting separately, there is not that conjunction between them which is necessary to form a criminal act.

Chance or misfortune.

81. If a man commits an unlawful act by misfortune or chance, and not by design, there is a deficiency of will, which exempts from criminality; for here the will does not co-operate with the deed. But he is not excused, if the accidental mischief ensues in the performance of an unlawful act; though even in the latter case the law makes a distinction between an unlawful act, which is in its original nature wrong and mischievous, *malum in se*, and one which is merely *malum prohibitum;* as where any unfortunate accident happens from an unqualified person being in pursuit of game, he is amenable only to the same extent as a man duly qualified.

Mahomedan Law.

General term.

82. The term, *mokulluf*, includes all persons accountable to the law for their actions; and refers particularly to the sane and adult, who alone are subject to the penalties of hudd and kissas.

Chance or ignorance.

83. It is not always held necessary by the Mahomedan law, that a vicious will and a vicious act should combine in order to make an offence complete; for a person may be the active, though remote, cause of an injury, either unintentionally and by mere accident; or by carelessness, obstinacy, or wilful neglect;(b) or he may occasion an injury passively by an intermediate cause. Here the will may act separately from the deed, or it may sit neuter, neither concurring with the act, nor disagreeing to it; but the offender is held responsible in his property, because it is deemed just that the person injured should receive compensation, and that the loss should fall on the cause of the injury rather than on any other person. It is however allowed that, if the injury is occasioned by an intermediate cause, the offender is liable to make compensation only when he transgressed in the original action.(c) A want or

(a) Ignorantia juris, quod quisque tenetur scire, neminem excusat.

(b) This appears reconcilable to the English law in regard to deodands.

(c) The following curious application of this principle is given in the Hedaya, vol. 4, page 359: "If a water-spout, set out from a house over the public road, fall upon any person and kill him, an examination must be

defect of will however is always considered so far as to mitigate the nature and degree of punishment. In offences against the person it is said, that "an offence is rendered complete by the intention;(a) and complete punishment (understood by retaliation) is incurred where that exists, but otherwise not;"—as where a person killed a man believing him to be a jackal, it was held that the offence was of less magnitude than wilful bloodshed, but was "not altogether exempt from criminality."(b) The pleas, then, for exemption from punishment are confined, first to cases in which there is a defect of understanding, including infancy and non compos mentis;(c) and secondly, to those in which the action is constrained by some outward force and violence, *i. e.* subjection to the power of others.(d)

General rule.

Infants and lunatics are exempt from hudd and kissas; but are liable to other penalties for acts, though not for words.

84. But even in regard to infancy and insanity this exemption saves only from hudd and kissas, *i. e.* fixed punishment, and retaliation. "The disqualifications in question occasion inhibition with respect to speech, but not with respect to actions; because acts, upon proceeding from the actor, are existent and perceptible, whereas mere words, such as purchase, sale, and so forth, are accounted existent only where they are of lawful force and authority, which depends upon the design of them, a thing which, in the case of infants and lunatics, is not regarded, because of their want of understanding: but if the actions are of such a nature as to induce an effect liable to prevention from the existence of a doubt, such as fixed punishment or retaliation, then infancy and lunacy occasion inhibition; whence it is that infants and lunatics are not liable to fixed punishment or retaliation, since no regard is paid to their design."(e)

made to discover which part of the spout it was that hit the person; and if it appear that he was struck by the end next the house from which it had projected, no atonement is due from the person who set it up, because with respect to that part he is not a transgressor, since he had placed *that* in his own property; but if it appear that the deceased was struck by the projecting end, the person who set it up is responsible, because with respect to that part he is a transgressor, as having caused the spout to project over the road without any necessity, since he might to as good purpose have fixed it up so as not to project over the road at all. If, on the other hand, it appear that the deceased was struck by both ends of the spout, the fixer up is responsible for an half of the fine, and the other half drops. If it cannot be discovered which part of the spout struck the deceased, in this case also an half of the fine is due; for the accident may have happened in either of *two* ways, in one of which the complete fine is due, and in the other nothing whatever, and therefore, in contemplation of *both* circumstances, an *half* is imposed."

(a) The apparent intention is correctly taken into consideration by the Mahomedan lawyers; but their fallacious subtleties have adulterated this as others of their wisest provisions; for in offences against the person it is held that, "as the intention is a thing concealed which we cannot discover but by inference from something affording an argument of it; and as the use of the instrument of homicide affords an argument of it, so the intention may be concluded from the instrument used"; (Hed. Trans. vol. 4, page 271)—whence it follows that the wilful murderer and the unlucky person who commits accidental homicide meet the same punishment. It will be remembered that the British government early introduced an amendment of this provision.

(b) See also the Section in another place on accidental homicide.

(c) Slavery forms a plea for exemption on the same terms as infancy and lunacy, but it is not thought necessary to refer to it here.

(d) There are many cases in which an offender is exempted from the stated punishment of hudd; but in such cases he becomes liable to discretionary punishment; for as Mr. Harrington observes, "the fixed penalty is so frequently severe and against the feelings of humanity, that numerous provisions have been made by the legislator for dispensing with or rather evading the law by qualifications, restrictions, and conditions, some one of which so often intervenes as to render the actual infliction of such severe punishment very rare."

(e) Hedaya Trans. vol. 3, page 470.

85. "If an infant instigate another infant to kill a man, and the infant so instigated kills the man accordingly, the fine for the man's blood is due from the infant's *akilas* (i. e. responsible relations); because he has actually killed the man, and the malice or error of an infant is one and the same,—that is, a fine is incurred equally in either instance. Nothing whatever is incurred by the infant who instigated the commission of the act, as he is not liable to be taken to account for his words, nothing being cognizable except what is noticed in the law, which pays no regard to the words of such persons. The akilas, moreover, having paid the fine, are not at liberty to reimburse themselves from the infant, either at present, or after he shall have attained maturity; for his words were uncognizable on account of a defect in his natural competency."(a)

One infant instigating another to the commission of an offence.

86. "If a lunatic or an infant destroy anything, they are liable to make a recompense, in order that the right of the owner may be preserved. The ground of this is that destruction occasions responsibility, independent of the intention or design;—as where, for instance, a man's property is destroyed, from being fallen upon by a person walking in his sleep, or from the falling of an inclined wall, after due warning; in which cases the sleeper or owner of the wall are responsible, although they did not design the destruction."(b) In the case of *zakat* (i. e. alms) which is not incumbent on infants or maniacs, the law distinguishes those who have lucid intervals.(c)

Responsibility if they destroy property.

Lucid intervals.

87. "Wilful murder committed by an infant, lunatic, or a person occasionally insane (*matooa*), is accounted the same as homicide by misadventure, and the fine is due from the akilas. *Shafei*, however, says that "wilful murder by those persons comes under the construction of wilful, insomuch that the fine for it is due from the property of the perpetrator, because the act was undoubtedly wilful, as that term applies to any thing done by intention and with design; and retaliation is remitted in this instance solely because persons of the above description are not liable to any corporal infliction; which argument, however, does not apply to their property, whence it is that expiation is required of them." But this opinion of Shafei is denied, because "will depends upon knowledge, and knowledge depends upon reason, which in a lunatic is altogether wanting, and in an infant is defective. Neither are they required to make expiation, because that is performed to cover a crime; and in the present instance there is no crime to be covered, as they are held incapable of committing a crime."(d) The law-officers of the Nizamut hold the latter opinion, and say that in cases of homicide, maiming, and wounding, suspicion of temporary derangement is sufficient to bar kissas and diyut, but does not preclude the imprisonment of the offender to prevent danger to society.(e)

Wilful murder by irresponsible persons.

88. "If a murderer, sentenced to suffer kissas, become insane before he has been delivered over by the kazee to the heir of the slain, he is not to be put to death; and his property is answerable for the fine of blood. If he become insane after he has been condemned, and

Supervenient insanity.

(a) Hed. Trans. vol. 4, page 400.

(b) Ibid, vol. 3, page 471.

(c) Ibid. vol. 1, page 4.

(d) Ibid. vol. 4, page 351.

(e) N. A. R. vol. 1, page 357.

delivered over by the kazee to the heir of the slain, the latter is at liberty to put him to death, notwithstanding his insanity."(a)

Such persons cannot injure themselves.

Intoxication.

89. A person under age is held in law to be incapable of any act by which he may injure himself; and the same rule applies to lunatics. And it is said in reference to this (in treating of apostacy) that "a person intoxicated with liquor so as to be deprived of his reason is accounted the same as a lunatic."(b) But the reason of this is explained elsewhere, as regards apostacy, to be that a person's belief cannot be ascertained during drunkenness.—A man is not to be condemned on his confession, made during intoxication, of a crime the punishment of which is purely a right of God; but he is liable to punishment, if he so confesses to an offence the penalty of which is also a right of the individual, "because a state of drunkenness is here the same as a state of sobriety for the sake of inflicting a penalty."(c)—But the Mahomedan law does not admit drunkenness to be pleaded as an excuse for crimes committed under its influence;(d) indeed intoxication is itself an offence liable to corporal punishment by hudd.

The period of attaining majority.

90. "A person becomes adult on attaining puberty, which is established by the ability of the organs of generation to perform their natural functions, which are then first acquired; or on the completion of his eighteenth year if a boy, or her seventeenth year if a girl.(e) This is the opinion of Haneefa; but the two disciples maintain that upon either a boy or a girl completing the fifteenth year they are to be declared adult. Others say that nineteen years are required in the case of a boy. The earliest period of puberty with respect to a boy is twelve years, and with respect to a girl nine years. When a boy or girl approaches the age of puberty, and they declare themselves adult, their declaration must be credited, and they become subject to all the rules affecting adults; because the attainment of puberty is a matter, which can only be ascertained by their testimony; and consequently, when they notify it, their notification must be credited."(f)

Weakness of mind.

91. The Mahomedan law also lays a civil inhibition on persons who have shown any species of mental depravity, not occasioned by a defect of understanding, as the practice of extravagance; and on an insolvent debtor;—but these form no exemptions in matters within the province of criminal law.

Compulsion.

92. "Compulsion applies to a case where the compeller has it in his power to execute what he threatens. The reason of this is, that compulsion implies an act which men exercise upon others, and in consequence of which the will of the other is set at nought, at the same time that his power of action still remains. Now this characteristic does not exist unless the person compelled be put in fear, and apprehend that if he do not perform what the compeller desires, the threatened evil will fall upon him; and this fear and apprehension cannot take place unless the compeller be possessed of power to carry his menace into execution; and

(a) Harrington's analysis, vol. 1, page 264.

(b) Hed. Trans. vol. 3, page 246.

(c) Ibid vol. 2, page 57.

(d) N. A. R. vol. 1, page 247, and vol. 3 page 6.

(e) The law officers appear to look solely to the age of the person without regard to his physical qualifications. See especially N. A. R. vol. 3, page 87.

(f) Hed. Trans. vol. 3, page 482.

unless it appear most probable to the person compelled that the compeller will execute what he has threatened, so as to force and constrain him to the performance of the act which the compeller requires of him. Compulsion, however, is not established by a single blow, or a single day's imprisonment, unless the compelled be a person of rank, to whom such a degree of beating or confinement would appear detrimental or disgraceful; for with respect to such a person compulsion is established by this degree of violence, as by it his volition is destroyed."(a)

Destruction of property by compulsion.

93. "If one person compel another to destroy the property of a third person, it is lawful for the person so compelled to destroy that property; because the property of another is made lawful to us in all cases of necessity, such as in a situation of famine(b) for instance. In such case compensation will be due from the compeller.—If one person compel another, by menacing him with death, to murder a third person, still it is not lawful for the person so menaced to commit the murder; but he must rather refuse, even unto death.* The retaliation, however, is upon the compeller, if the murder be wilful."(c) This latter point is stated according to the opinion of Haneefah and Imam Mahomed, who consider the compelled person as the instrument rather than the author of the homicide, yet subject to discretionary punishment, if the circumstances of the case appear to require it. But others among the lawyers disagree, and contend that both parties are liable to the penalty of murder. Mr. Harington says, "the principle of justification established by Aboo Haneefah and Imam Mahomed is applicable, *a fortiori*, to every case of physical compulsion, and necessity, in which the homicide may be altogether involuntary on the part of the person, who is forcibly made the instrument of committing it. But no illegal act can be justified under the Mahomedan law by the mere command, or influence, unaccompanied with force or menaces, of a parent, husband, or master, or of any other person whatever."(d)—"If a person upon compulsion commit *zina*, he is liable to punishment, according to Haneefa; but the two disciples maintain the contrary."(e)

Murder by compulsion.

* But see opinion of law-officers in ¶ 118.

Regulation Law.

General expression.

94. The exemptions from punishment, admitted by the Mahomedan law, are acknowledged by the regulations incidentally though not expressly. It is provided in Clause 2, Section 3, Reg. LIII. 1803, with regard to dacoity, "that, as in all other cases of criminal conviction and punishment, the party convicted must be adult and of sound understanding, so as to render him a proper object of punishment."

(a) Hed. Trans. vol. 3, page 452.—A person may lawfully eat or drink a prohibited article upon a compulsion which threatens life or limb; and therefore, if he persist in refusing to eat or drink such article until he lose his life or limb, he is an offender, because he is then an accessary to his own destruction, in the same manner as if he were to refrain from eating carrion when dying with hunger. Hed. Trans. vol. 3, page 459.

(b) It was for some time disputed among European lawyers, whether a man in extreme want of food or clothing might justify stealing either to relieve his present necessities; but the law of England admits now of no such excuse. *Blackstone, book 4, chap. 2.*

(c) Hed. Trans. vol. 3, page 461.

(d) Harington's analysis vol. 1, page 249.

(e) Hed. Trans. vol. 3, page 465.

95. Satisfactory proof of insanity at the time of the act being committed, as it would preclude the imputation of guilt, must also exempt the insane person from conviction and punishment. C. O. No. 307, of vol. 1, para. 6.

Insanity supervening subsequent to the perpetration of the crime, and prior to conviction.

96. The circumstance of supervening insanity, subsequent to the perpetration of a crime at a time when no degree of derangement existed, and prior to the conviction of the prisoner for such crime, having been declared by the law-officers, in a case of murder, to bar all capital or discretionary punishment, and to subject such person to diyut only,—in all such cases, viz. of a prisoner's being afflicted with insanity subsequent to the commission of any crime, and of his subsequent perfect recovery, the law-officers of the Nizamut Adawlut are to be called upon to declare what the futwa would have been, if such derangement had not intervened, and the judges are to pass sentence under the general regulations, and on consideration of all the circumstances of the case, the same as if no such malady had happened to the prisoner. Reg. IV. 1822, sect. 4.

If the law officers of the Nizamut acquit on the ground of insanity, and the judges convict.

97. Two or more judges of the Nizamut Adawlut are competent to convict and punish a prisoner charged with a criminal offence, in opposition to his acquittal by their law-officers, in any case in which the futwa declares the legal penalty, or punishment generally, barred by reason of a doubt as to the prisoner's sanity when he committed the act charged; provided that the judges, on due consideration of the evidence, are satisfied that there is no sufficient ground to believe that the prisoner was insane when he committed the act so charged, and that he is a proper object of punishment. Reg. IV. 1822, sect. 7.

Proceedings on the trial of an insane person.

Duty of magistrate.

98. When a person, brought before a magistrate in a state of alleged insanity, is charged with having committed a criminal act of a serious nature, such as, supposing him not to be insane, would render him upon conviction liable to punishment, the magistrate is in the first instance to make a full inquiry to ascertain the fact of his real insanity; and should cause him to be occasionally examined by the surgeon, in such way as to enable him to form an opinion of the state of the prisoner's mind.—If it be proved to his satisfaction that the prisoner is really insane, he is to close his proceedings with a statement of his opinion to that effect, and to submit them to the session judge; and he should have a sufficient number of witnesses present besides the surgeon, who may be able to depose to the prisoner's previous state of mind.—If the insanity is not established, he is to proceed as in other cases of criminal charges. C. O. Nos. 307, para. 3, and 137 of vol. 1.

Duty of judge.

99. The session judge, after inspecting the proceedings, seeing the prisoner, and examining the surgeon on oath as to the grounds of his opinion, is to pass such orders as may appear proper; and, if satisfied of the actual insanity, is to instruct the magistrate to keep him in further custody, or to send him to the insane hospital of the division, until his sanity be restored. On being pronounced sane, he should be again brought before the magistrate, by whom the charge against him may be properly cognizable, that he may be regularly put upon his trial, and the proceedings on the charge against him be completed before the proper tribunal. C. O. Nos. 307, para. 4, and 137 of vol. 1, and Const. No. 822.

If prisoner is found insane on trial before the sessions.

100. A similar course of proceeding would be proper, in the event of the prisoner having been committed by the magistrate for trial before the sessions, and found insane by that court at the time of trying the commitment; in which case the trial must necessarily be postponed, until the prisoner recover. C. O. No. 307 of vol. 1, para. 5.

101. A final acquittal on the ground of insanity should not be pronounced without a regular trial. Session judges are empowered to acquit finally all parties proved to have committed penal offences while labouring under insanity; but are to report such cases to the Nizamut, for the orders of the court in regard to the future safe custody of the prisoner, only when the crime charged is such as, if committed by a responsible agent, would have rendered a reference necessary. C. O. No. 307 of vol. 1, para. 6, and No. 183 of vol. 3.(a)

Final acquittal.

102. In the same manner, in the case of a prisoner standing mute, the magistrate is to cause him to be occasionally examined by the surgeon in such a way as to enable him to form an opinion, whether he is mute from obstinacy, from any real impediment of speech, or from an affection of the mind. And if the prisoner is committed to the sessions, he is to have witnesses in attendance besides the surgeon to depose as to the previous existence or otherwise of the dumbness.—If the prisoner's entire disability to hear or speak be well established, enquiry should be made among the relations and friends of the prisoner, whether any one has been in the habit of communicating with him by signs and tokens; and such person may be employed as an interpreter between the prisoner and the court, if previously sworn to interpret truly. But if it is impracticable by any means to convey intelligence to him, it is incumbent on the judge to enquire for, and take, all the evidence which the circumstances of the case may indicate for the prisoner's defence; and carefully ascertain and record every point which may make in his favor.—If the prisoner appear to be dumb, but not deaf, and apparently in a sane state of mind, the judge will be generally able from the signs and tokens of the prisoner, in answer to questions put to him, to complete the trial in a regular and satisfactory manner. C. O. No. 137 of vol. 1.

Proceedings in the case of a person remaining mute, as if deaf and dumb.

Dumb, but not deaf.

103. In the case of a prisoner standing mute, it is not sufficient that the deposition of the surgeon be taken as to his sanity, or otherwise; but he should be examined specifically as to the cause of his standing mute. N. A. R. vol. 2, page 416.

104. A prisoner was committed on the charge of "murder while in a state of insanity." The wording of this was held to be erroneous and absurd, taken as a criminal charge, the magistrate not being competent to determine the question of sanity or otherwise. N. A. R. vol. 3, page 60.

Commitment.

105. The following summary of the cases given in the Nizamut Adawlut Reports will shew the practice of that court on the trials of persons, who are, or appear, or profess to be insane.

Practice and precedents in cases of crimes committed during insanity.

106. Prisoner *acquitted* on proof of present and previous insanity, but detained in custody until the recovery of reason. Vol. 1, pages 19, 270. Vol. 2, pages 68, 383.

107. Prisoner *acquitted* on the ground of insanity or mental derangement, notwithstanding the want of all proof of previous aberration of intellect, and detained in custody until the recovery of reason. Vol. 1, pages 96, 192, 258. Vol. 2, page 260. Vol. 3, pages 239, 243. Vol. 4, pages 264, 267.(b)

(a) The form of sentence to be used in such cases is given in the appendix.

(b) When the prisoner has been detained in custody as insane, the court have required that he should not be released on recovery without a report to them in the following cases, Vol. 1, page 96. Vol. 2, pages 189, 233. Vol. 3, pages 239, 243 :—and have not required such report in the following,—Vol. 1, pages 192, 258. Vol. 2 page 260.

108. Prisoner *acquitted* on the ground that the act was committed in a temporary fit of derangement produced by sudden irritation, and on proof of previous insanity; and detained in custody until some relation or friend should undertake the charge of him, so as to prevent his doing future mischief. Vol. 1, page 127.

109. Prisoner *acquitted* on the ground that he committed the act in a sudden paroxysm of fever, and discharged. Vol. 1, page 300.

110. Prisoner *convicted*, the plea of insanity not being proved. Vol. 1, pages 128, 211. Vol. 2, page 344. Vol. 3, pages 60, 286. Vol. 4, page 176. Vol. 5, page 197.

111. Prisoner *convicted*, his standing mute being considered obstinacy or artifice. Vol. 1, page 357. Vol. 2, pages 365, 416. Vol. 3, page 158.

112. Prisoner *convicted*, the plea of insanity being set aside, and the act attributed to religious phrenzy. Vol. 1, page 384. Vol. 3, page 251.

113. In the case of the murder of a boy by his uncle without provocation and in the presence of witnesses, the court deemed the circumstances so extraordinary, that they returned the case with directions to ascertain the prisoner's state of mind previous to the occurrence. Vol. 4, page 230.(a)

114. Prisoner appearing to be insane at the time of trial, was ordered to be confined, with instructions that, on recovery of his reason, the evidence taken against him should be explained to him, his defence taken, and the law officer called upon for a fresh futwa. Vol. 2, page 12.

115. Prisoner was tried while labouring under insanity, and acquitted by the judge on that ground. The court quashed the proceedings, and required attention to C. O. No. 307 of vol. 1. Vol. 5, page 138.

v. ¶. 100.

Infancy.

116. The following synopsis of cases given in the Nizamut Adawlut Reports will show the practice of the court in regard to criminals of immature age.—At the age of 9 a prisoner was held not to be a fit subject for punishment; [vol. 1, page 152;] and beyond that period till 18 years of age, the youth of the prisoner has always been more or less considered in mitigation of punishment. A girl of the age of nine years and a few months, but who showed herself abundantly *doli capax*, was convicted of wilful murder, and sentenced to imprisonment for life; [vol. 1, page 213;] and in six other cases capital punishment was barred solely by reason of the non-age of the prisoner; [vol. 1, page 215; vol. 2, pages 2, 145, and 471; vol. 3, page 179; and vol. 5, page 53;] in these cases the age of the prisoner was respectively 14, 12, 16, 14, 13, and 18. Prisoners have been condemned capitally at the ages of 18 and 20; [vol. 4, page 265; and vol. 5, page 178.] Other instances are reported, in which the usual

(a) In some cases the prisoner has been allowed the benefit of a doubt of sanity, when there appeared no motive for the commission of an act, of which it seemed *primâ facie* that a man in his right mind would not be guilty (*v.* vol. 2, page 260 and vol. 4, page 267); but in another case (vol. 2, page 344) such consideration is distinctly disallowed, the court appearing to coincide with the circuit judge, who "considered it highly dangerous to the peace of society to permit murderers to escape justice, merely because an European judge, very imperfectly acquainted with the motives of action which prevail among the natives, could not discover the train of reasoning which induced them to perpetrate such diabolical acts."

and merited punishment has been mitigated on account of youth; [vol. 1, page 148; vol. 2, pages 20, and 331; vol. 3, page 147; and vol. 4, page 305.] A youth was punished, on conviction of carnally knowing a girl aged eight years, at which age her consent was immaterial, with 15 ratans and 6 months' imprisonment; [vol. 2, page 452.] A boy only ten years old, being convicted by the futwa of rape on a girl only three years old, the court viewed it as an attempt only, and punished it as a misdemeanor with one year's imprisonment; [vol. 3, page 87.]

Intoxication.

117. As regards intoxication, the Nizamut Adawlut has held in practice, that although it cannot be admitted as a temporary defect of will so as to bar punishment in the same manner as infancy and insanity, yet it should be allowed weight in judging of motives and intentions. There is a great difference between an offence entered upon with deliberation and a criminal intent, and one committed without premeditation and unprovoked by previous enmity and malice. Intoxication was considered as a ground of mitigation of punishment in the following cases; [vol. 1, pages 157 and 247; vol. 2, pages 24 and 453; vol. 3, pages 6 and 33; and vol. 4, page 8.] But it was not so considered in a case [vol. 3, page 216] in which it was shown that the prisoner had wilfully employed such means to nerve him to the commission of the crime; for there the guilt was premeditated and the malice constant; and "the drunken man, like his sword, was the mere instrument of giving effect to such intent." In another case [vol. 1, page 23] the plea of intoxication was invalidated by the evidence.

Practice.

Compulsion.

118. The prisoner killed the deceased by order of his master, and under fear of immediate death in case of refusal. The futwas of both courts declared him not liable to kisas, and that he should be released.* The Court accordingly directed his immediate discharge. N. A. R. vol. 1, page 101.

cf. ¶ 93.

Orders of a superior.

119. The orders of a superior authority cannot be held to justify a gross infraction of the peace, or other offence, committed under circumstances which can leave no doubt on the mind of the offenders of the criminality of the act;—although such consideration may be allowed weight in allotting the quantum of punishment; [N. A. R. vol. 3, page 128.] But a person may be justified if the criminality of the act is not obvious, and if he considers himself bound to obey the party from whom he receives instructions to commit it. N. A. R. vol 2, page 330.

SECTION III.

OF PRINCIPALS AND ACCESSARIES.

English Law.

120. When two or more persons are charged with the commission of a felony, they are considered as either—*first*, principals in the first degree; *secondly*, principals in the second degree; *thirdly*, accessaries before the fact; or *fourthly*, accessaries after the fact. And in either of these characters they are felons in consideration of law; for he who takes any part in a felony is in construction of law a felon, according to the share which he takes in the perpetration of the offence.

Principal in the first degree.

121. A principal in the first degree is one who is the actor or actual perpetrator of the fact. But it is not necessary that he should be actually present when the offence is consummated; for if one lay poison purposely for another, who takes it and is killed, he who laid the poison, though absent when it was taken, is a principal in the first degree. So it is not necessary that the act should be perpetrated with his own hands; for if the offence be committed through the medium of an irresponsible or innocent agent, the employer, though absent when the act is done, is answerable as a principal in the first degree. But if such agent is aware of the consequences of his act, he is a principal in the first degree, and the employer, if he be absent when the fact is committed, is an accessary before the fact; or, if he be present, a principal in the second degree.

Principal in the second degree.

Aiders and abettors.

122. Principals in the second degree are those who are present aiding and abetting at the commission of the fact.—They are called also aiders and abettors, and sometimes accomplices, but the latter appellation will not serve as a definition, because it includes all the participes criminis.—This presence need not always be an actual immediate standing by, within sight or hearing of the fact; but there may be also a constructive presence, as where one commits a murder, and another keeps watch or guard at a distance. But he must be sufficiently near to give assistance; and the mere circumstances of a party going towards a place, where a felony is to be committed, in order to assist to carry off the property, and assisting in carrying it off, will not make him a principal in the second degree, unless, at the time of the felonious taking, he were within such a distance as to be able to assist in it.—If an act is committed in pursuance of a previous concerted plan, parties not present, or in such proximity, are not principals, but accessaries before the fact. But presence during the whole transaction is not necessary, as where several persons combine to forge an instrument, and each executes by himself a distinct part of the forgery, and they are not together when the instrument is completed, they are, nevertheless, all guilty as principals. There must also be a participation in the act; for merely standing by and not attempting to prevent the felony, or to apprehend the felon, does not make a man a principal.—But if one encourage another to commit suicide, and be present abetting him while he does so, such person is guilty of murder as a principal, and if two persons encourage each other to self-murder and one kills himself, but the other fails in the attempt, he is a principal in the murder of the other.—There must be a felonious participation in the design, as well as a participation in the act.—Aiders and abettors may be tried before the principal in the first degree has been found guilty; and may be convicted, even though he is acquitted.

Accessary before the fact.

123. An accessary before the fact is he who, being absent at the time of the offence committed, doth yet procure, counsel, command, or abet another to commit a felony; and he also is so considered, who shows an express liking, approbation, or assent to the felonious intent of another, although he gives no encouragement or hope of any immediate help or assistance. But he who barely conceals a felony, which he knows to be intended, is guilty only of misprision of felony, and is not an accessary. The difference between a principal in the second degree, and an accessary before the fact, lies in this, that the former must be *present* aiding and abetting. A man may be an accessary before the fact by the intervention of a third person, as he who procures a felony to be done is a felon.—There can be no accessaries before the fact in those offences, which by judgment of law are sudden and unpremeditated, as manslaughter and the like; and all persons concerned in crimes under the degree of felony are principals.—An accessary cannot be guilty of a higher crime than his principal.—If the principal totally and substantially *varies* from the terms of the instigation; if being solicited to commit a felony of one kind, he wilfully and knowingly commit a felony of another; he will stand single in that offence, and the person soliciting will not be involved in his guilt;—but it is different, if the principal *complies in substance* with the instigation of the accessary, varying only in circumstance of time or place, or in the manner of execution; or where the principal goes beyond the terms of the solicitation, if in the event the felony committed was a probable consequence of what was ordered or advised.—If the principal *by mistake commits a different crime* from that to which he was solicited by the accessary; as *e. g.* if A counsels B to kill C and he by mistake kills D;—the accessary is answerable only when the crime committed is the probable consequence in the ordinary course of things of his flagitious advice. Accessaries before the fact may be tried whether the principal has or has not been convicted; but, if once tried as accessaries, they are not liable to be again tried for the same offence.

Accessary after the fact.

124. An accessary after the fact is one who, knowing a felony to have been committed by another, receives, relieves, comforts, or assists the felon. Any assistance given to one known to be a felon, in order to hinder his being apprehended, or tried, or suffering the punishment to which he is condemned, is a sufficient receipt to make a man an accessary of this description; so also to convey instruments to a felon to enable him to break gaol, or to bribe the gaoler to let him escape; also whoever rescues a felon from an arrest for the felony, or voluntarily and intentionally suffers him to escape is an accessary to the felony; but not if he merely suffers the escape by omission: and it has been said, that those are in like manner guilty who oppose the apprehending of a felon. A man may be an accessary after the fact, by receiving one who was an accessary before, as by receiving a principal;—and it has been holden, that a man may make himself an accessary after the fact to a larceny of his own goods, or to a robbery on himself, by harbouring or concealing the thief, or assisting in his escape. The receiver must have had notice, either expressed or implied, of the felony having been committed, in order to make him an accessary by receiving the felon; and the felony must also be complete at the time of the assistance given. A wife is not made an accessary by receiving her husband; but the latter may be an accessary for the receipt of his wife. Accessaries after the fact cannot be tried before the conviction of their principal, unless they consent to it; but having been once duly tried they cannot be again tried for the same offence.

Punishment.

125. The rule of the ancient law was, that accessaries should suffer the same punishment as their principals; but this is modified now. It seems that principals in the second degree, wherever mentioned in statutes, are made punishable in the same manner as principals in the first degree; but when by the construction of any particular statute principals in the second degree are not punishable by death (as when the punishment is imposed upon the person committing the offence, and not upon the offence by name), and no punishment is prescribed by the statute, they may be transported for seven years, or imprisoned for two. Accessaries before the fact are in the same manner generally made liable to the same punishment as principals in the first degree; but they are not punishable by death unless it is so expressly provided by statute; and if no penalty is provided, they may be punished equally with principals in the second degree, as noted above. Accessaries after the fact are not punishable by the common law for receiving, harbouring, or maintaining the principal in offences under felony; but in some few cases a penalty is inflicted by statute. Yet in those cases if the act of the receiver amount to a rescue, or the like, he is indictable for a misdemeanor. They are also liable to the same punishment as principals in the second degree, when no specific penalty is provided; but several of the later statutes have established the proportion which the guilt of accessaries after the fact bears to that of accessaries before the fact, in as much as they make the former subject to imprisonment for any period not exceeding two years, while the punishment of the latter extends to three years.(a)

Mahomedan Law.

General principle.

126. It seems to be the general principle of Mahomedan law, that all parties concerned in an offence, whether as principals or accessaries, are equally guilty, and are therefore liable to the same punishment. This appears from the books; but in practice the law-officers of our courts generally adjudge discretionary punishment to the aiders and abettors when the principals are declared liable to kisas or hudd. Privity to the commission of a crime, and concealment thereof, is also held to be an offence punishable by seasut.

Accessaries in a case of murder.

127. "In a case of a single murder by a number of persons, the whole are liable to suffer death, although the principle of retaliation, which necessarily implies equality between the offence and the punishment, requires the capital punishment of only one. In this instance analogy is abandoned for a more approved construction of the law (*istahsan*), because murder is most frequently committed by force, and retaliation has been ordained for the purpose of determent. Each individual is, therefore, as if he alone had committed the act; and consequently equality is certified, and retaliation incurred, that the lives of mankind may be in security." But according to one authority (quoted by Harington) this doctrine "is applicable to those only among the criminals who have given a mortal wound to the slain; and therefore accomplices employed in watching, or even those who assist in holding the hands and feet of the person murdered, are not liable to kisas; but may be punished in any mode of exemplary punishment (seasut) at the discretion of the magistrate."(b)

In gang-robbery.

128. So also in gang-robbery, according to analogy, the punishment of amputation should be inflicted on such only among the gang, as have actually carried out the property, because the offence is complete as regards them only; but by *istahsan* they are all punished

(a) Much of the above is taken from "Archbold's Pleading and Evidence in Criminal Cases."

(b) Hed. Trans. vol. 4, page 302. Harington's Analysis, vol. 1, page 262.

equally. Some hold that they are all by construction equally concerned in the carrying out of the property, as aiding therein by watching or resisting opposition; "and that therefore, if these were not liable to amputation the door of punishment would be closed."(a) The latter opinion, if generally acknowledged, and carried out, would make the general principle of the Mahomedan and the English laws coincident.

In gang-robbery attended with murder.

129. "If any one of a gang of robbers commit murder, the prescribed punishment is inflicted upon the whole; because the punishment in this instance is considered as a penalty for the assault of the whole, which is established by each of them being aiding and abetting to the other."(b)

If one of the persons concerned is incapable of committing crime.

* *v. Preamble to Reg.* LIII. 1803.

130. "If any one among the gang of robbers is an infant, or a lunatic, or a relation within the prohibited degrees of the person robbed, punishment is remitted, not only with respect to this person, but also with respect to all the rest of the party."* This is the opinion of Haneefa and Ziffer; but Aboo Yoosuf contends that this rule only obtains when such person is the actual perpetrator of the crime; and he founds his opinion on the argument, that if the offence is not complete in regard to the principal, so neither can it be in regard to the aiders and abettors; but that the completeness of the offence committed by the principal is not affected by a defect in the accomplices. The argument of Haneefa and Ziffer is, that "the robbery is a single offence committed by the whole party, and that is the cause of the punishment; but where it happens that the act of *some* of them is not an occasion of punishment, the act of the others is then only a *part* of the cause, and an effect cannot be established by a *part* of a cause."(c)

131. The opinion of Aboo Yoosuf appears to be upheld by an argument of Imam Mahomed in another place, in which he says, that "in *zina* the man is the principal, and the woman only the accessary; now the prevention of punishment in respect to the principal occasions the prevention of it in respect to the accessary; but the prevention of punishment with respect to the accessary does not occasion the prevention of it with respect to the principal. So if a man commit *zina* with a girl who is an infant or insane, he is liable to punishment, but no penalty is inflicted on the woman; but if a woman admit an idiot to commit *zina* with her, neither of the parties is punishable.(d)

Regulation Law.

General principle.

132. In general the regulations, in enacting the penalty for any particular offence, make the accomplices liable to the same punishment as the principals; as *e. g.* in the case of dacoity by Section 4, Reg. LIII. 1803. And we may therefore take such to be the general principle of the law, though in practice a more lenient judgment is almost always considered sufficient for those not taking the actual lead in the designing or execution of the offence.

Accessary may be found guilty, though principal is unknown or acquitted.

133. If the fact of the crime, as murder, be established, there is no reasonable ground why a person should not be convicted on his credible and credited confession of having been privy, although another person charged with the murder be acquitted of it. [N. A. R. vol. 3, page 97.] And in general practice it seems in no way necessary to the conviction of an accessary that the principal should be first convicted or even known.

(a) Hed. Trans. vol 2, page 104.
(b) Hed. Trans. vol. 2, page 133.
(c) Hed. Trans. vol. 2, page 134.
(d) Hed. Trans. vol. 2, page 30.

Practice in regard to the degrees of crime.

134. A few examples will suffice to show the practice of the Nizamut Adawlut in weighing the different degrees of guilt of the various participes criminis;—in many cases principals and accessaries have received the same punishment.

135. Four prisoners charged with murder. The principal was sentenced capitally; one convicted of being an accessary before the fact, and of bringing a false accusation of murder against an innocent person, was sentenced to imprisonment for life; and the remaining two convicted of privity to the crime after the fact, and concealing their knowledge thereof, were sentenced to imprisonment for three years. N. A. R. vol. 4, page 235.

136. Four prisoners charged with murder and robbery. One was sentenced as an accomplice to suffer death; another, convicted of privity after the fact, and receipt of the plundered property, to imprisonment for fourteen years; the third, of privity before the fact, to fourteen years; and the fourth of privity after the fact to seven years' imprisonment. N. A. R. vol. 3, page 355.

137. Five prisoners charged with murder. One as an accomplice was sentenced to imprisonment for life; two others, as accessaries after the fact and for receiving part of the stolen property, to imprisonment for fourteen years; and the remaining two, as accessaries after the fact, and concealing their knowledge thereof, to imprisonment for one year. N. A. R. vol. 5, page 186.

138. Two prisoners charged with murder. The one convicted as an accomplice, and the other as an accessary after the fact, were sentenced to imprisonment for life and seven years respectively. N. A. R. vol. 4, page 5.

139. Nos. 1 and 2 convicted of concealment of murder, and throwing the body of the murdered person into the river; No. 3 of being an accomplice in the concealment; and No. 4, a chowkeedar, of not giving information after having seen the corpse:—sentence, Nos. 1 and 2 imprisonment for two years; Nos. 3 and 4 for one year. N. A. R. vol. 4, page 2.

140. Plunder:—the leader was sentenced to imprisonment for twelve years; the two principals for ten years; and the other three prisoners, as inferior agents, for seven years. N. A. R. vol. 5, page 1.

141. Murder:—two as principals were sentenced to death; and another, convicted of instigating, aiding, and abetting, to imprisonment for life. N. A. R. vol. 2, page 5.

142. Murder:—three as accessaries were sentenced to imprisonment for life; another, convicted of being present and cognizant of the intent, for fourteen years; and another, of aiding and abetting, for seven years. N. A. R. vol. 3, page 282.

143. Culpable homicide:—No. 1 convicted of beating the deceased so as to cause death, was sentenced to imprisonment for five years; and No. 2, of instigating and commanding the beating, for three years. N. A. R. vol. 4, page 129.

144. Affray:—the prisoner though there was no proof that he was actually present, was convicted of having instigated and directed an affray attended with homicide and wounding, and was sentenced to imprisonment in banishment for life. N. A. R. vol. 1, page 8.

CHAPTER III.

OF SUBJECTS RELATING TO THE CONDUCT OF CASES.

SECTION I.

OF JURISDICTION.

General.

145. It has been shown in a former chapter, that the criminal courts established by the East India Company, superseded and supplied the places of those, which formerly existed under the native government; and it follows therefore that all native subjects of the British government (the definition of which term is given presently*), as well as all other persons not specially excepted by law, are amenable to those courts for crimes and misdemeanors committed by them within the limits of the presidency of Fort William, except as regards the local jurisdiction of the Supreme Court, and those portions of territory to which, although under British rule, the general regulations have not been extended.

* *v.* ¶ 173 *et seq.*

Supreme Court.

146. The magistrate of the twenty-four purgunnahs(a) has no jurisdiction or authority whatever in the town of Calcutta, or any places adjacent within the limits of the jurisdiction of the supreme court. Reg. IX. 1793. sect. 3.

By birth of offender.

Europeans, not British subjects.

147. All Europeans, not British subjects, are amenable to the authority of the criminal courts within whose jurisdictions they may be apprehended and brought to trial, in common with the natives of the country. *Beng.* Reg. II. 1796. sect. 2, cl. 1. *Ben.* Reg. XVI. 1795, sect. 4, cl. 1. *Ced. Prov.* Reg. VI. 1803, sect. 19, cl. 1.

Children of a British subject.

148. The legitimate child of a British father is not amenable to the mofussil courts; but his illegitimate offspring is so amenable, because illegitimate children are considered as of the same country as their mother. Constructions, Nos. 978 and 806.

149. A person born in wedlock at Madras; his father being a German, and his mother a Scotch woman; was declared by the advocate general to be a British subject, and amenable only to the supreme court. N. A. R. vol. 2, page 111.

On whom the proof of jurisdiction lies.

150. If a person is found residing in the mofussil in such circumstances, as do not almost necessarily designate and prove him to be a British subject, and even then, it is for such person to prove his right to decline the jurisdiction of the local courts. The practice of the supreme court, in requiring its jurisdiction to be proved by the prosecutor, has been introduced in consequence of the jurisdiction of that court being expressly confined to particular and specified classes of persons; but in courts of general jurisdiction, the jurisdiction is to be presumed,

(a) And à fortiori any other magistrate.

and it is incumbent on the party declining the jurisdiction to show his exemption. All the provincial courts are courts of general jurisdiction; i. e. they are not limited except by reason of locality; and in them therefore the onus probandi as to his birth rests with the prisoner. *Opinion of the Advocate General in* N. A. R. vol. 2, page 119.—Const. No. 759.(a)

By locality of offence.

Genoral principle.

151. Although the regulations of government contain no specific provision to the effect, it is nevertheless an established principle of law and usage, that persons charged with criminal offences shall (save under special ground of exception) be tried for the same in the criminal courts, within the jurisdiction of which the acts charged may have been committed. Preamble to Reg. VIII. 1822.

Concurrent jurisdiction of magistrates in matters of police.

Restrictions.

152. A concurrent jurisdiction is vested in the magistrates of the several zillahs in the cases and under the restrictions following; viz. one magistrate may empower his police, under his warrant, to pursue persons charged with crimes or misdemeanors into the jurisdiction of another magistrate; and the latter, as well as all persons having authority or residing in the jurisdiction into which the offenders are pursued, are required to afford every assistance in their power to the pursuing officers for the apprehension of the offenders. But this authority vested in the magistrate extends only to cases, in which the offence has been committed within his own jurisdiction, or where the offender was actually within his jurisdiction at the time when the charge was preferred against him. The magistrate of one zillah cannot issue a warrant for the apprehension of any offender being in another zillah at the time of the complaint being preferred, for any crime not committed within the limits of his jurisdiction. In such cases the complainant must apply in the first instance to the magistrate of the zillah in which the crime was committed, or in which the offender may reside or be found. *Beng.* Reg. XXII. 1793. sect. 16. *Ben.* Reg. XVII. 1795. sect. 15. *Ced. Prov.* Reg. XXXV. 1803. sect. 16.

153. A magistrate cannot apprehend any person charged with an offence committed beyond the limits of his own district, and not actually being or residing therein when the complaint was preferred. Const. No. 404.

Magistrate may be vested with a general concurrent authority as a joint magistrate.

154. The government may invest a magistrate with a general concurrent authority as joint-magistrate, in any contiguous or other jurisdiction or jurisdictions, or in any part thereof. Reg. XVI. 1810. sect. 3.

Offence perpetrated in another district.

Case to be transferred.

Proviso.

155. Nothing in the regulations is to be construed to empower a magistrate to try and pass sentence on, or to commit to the sessions, any person charged with an offence not perpetrated within the limits of his district, except under special authority from government, or the Nizamut Adawlut. If it should appear, in the course of the investigation of any case, that the act charged was not perpetrated within the limits of his district, but in some other jurisdiction, the magistrate, who commenced the proceedings, or is conducting the investigation, is to send over the parties and witnesses, together with all the proceedings he has held thereon, to the magistrate of the district within which the crime appears to have been committed, in order that the parties may be there dealt with according to law. If, however, the

(a) For the rules regarding the amenability of European British subjects to the Company's courts, see book 8, chapter 1.

immediate adoption of this course would be attended with great inconvenience to the parties and witnesses, or if there are circumstances which make it advisable that the trial should be brought on or completed at the station, at which the proceedings were instituted, the magistrate may suspend such transfer, and report to the Nizamut Adawlut. This rule does not refer to offences committed beyond the Company's territories (for which see Reg. V. 1809, and sect. 6. Reg. I. 1822, paras. 165 *et seq*). Reg. VIII. 1822. sect. 2.(*a*)

Government may order transfer.

156. The government may order the trial of any person charged with a criminal offence to be conducted in a different zillah from that in which the act was perpetrated; and both magistrates shall be bound, on the receipt of orders for the purpose, under the official signature of a secretary to government, to proceed to bring the party to trial at the place fixed therein, in the same manner as if the offence charged had been committed within that jurisdiction. Notice of every such order is to be immediately given to the Nizamut Adawlut, and to the sessions court for the district within which it is intended that the trial should take place; and those courts are bound to proceed, as if the case had been brought on in its proper district. Reg. VIII. 1822. sect. 3. cl. 1.

Nizamut Adawlut may alter the venue of a trial as regards the sessions.

157. The Nizamut Adawlut also may order a trial to be brought on at the station or jail delivery of any magistrate, other than that of the district within which the crime was perpetrated, whenever, either from the magistrate's representation, or other information, it appears to the court, on substantial grounds to be recorded on their proceedings, that such measures will promote the ends of justice, or tend to the general convenience of parties and witnesses without hindrance thereto. An order under the official signature of the register of the court is sufficient authority for the same. Reg. VIII. 1822. sect. 3. cl. 2.

Rule where venue is altered.

158. When a trial is so removed, or is ordered to be carried on in the district where the proceedings were instituted, instead of being transferred to that in which the crime was perpetrated, the magistrates are bound to conform to any instructions they may receive from the authority issuing the orders; and the trial held and sentence passed in consequence, shall be of the same legal effect, as if the whole had been conducted at the station of the district within which the crime was perpetrated. Reg. VIII. 1822. sect. 4.

Extra-regulation provinces.

159. The court would not sanction the transfer of a trial to a place, to which the regulations of government did not extend, and which therefore is not contemplated in the above enactment. Const. No. 474.

Disputed jurisdiction.

160. In a case of disputed possession, in which the plaintiff and defendant asserted different jurisdictions, it was held that either magistrate might take up the case, and proceed with the investigation; but that if, in the course of it, it should appear that the lands were situated in the other district, he should refer the parties to the other magistrate, and certify to that officer the proceedings held by him in the case. Const. No. 694.

(*a*) In general, all offences must be inquired into as well as tried in the county where the fact is committed. Yet if larceny be committed in one county, and the goods carried into another, the offender may be indicted in either; for the offence is complete in both. Or he may be indicted in England for larceny in Scotland, and carrying the goods with him into England, or vice versâ; or for receiving in one part of the United Kingdom goods that have been stolen in another. But for robbery, burglary, and the like, he can only be indicted where the fact was actually committed; for though the carrying away and keeping of the goods is a continuation of the original taking, and is therefore larceny in the second county, yet it is not a robbery or burglary in that jurisdiction. *Blackstone, book 4, chapter 23.*

Examples of doubtful jurisdiction.

161. An inhabitant of Lahore carried off a child without the knowledge of his parents, inhabitants of the same state, and settled in the British territories, in which he was accused by the parents, and proved to have committed the crime. Held, that the prisoner could not be tried in our courts for child-stealing, but might be committed on the minor charge of retaining in his possession a child knowing him to have been stolen. Const. No. 1043.

162. A person was charged with enticing away a boy from Behar, and robbing and attempting to strangle him in Tirhoot. Held that the trial should take place in Tirhoot. N. A. R. vol. 2, page 205.

163. A person having been convicted of having stolen property, knowing it to be stolen, in his possession, within the limits of the jurisdiction of the Supreme Court, the Nizamut Adawlut determined that the offence was not cognizable by the Calcutta court of circuit. N. A. R. vol. 3, page 163.

Requisitions from one magistrate to another.

164. The appeal from the order of one magistrate, acting on the requisition of another, should be made to the appellate court to whom the former is subordinate. Const. No. 625.

Foreign territories,

Crimes committed in, by native British subjects, apprehended within the British provinces.

* *Or misdemeanor, Reg. I.* 1822, *sect.* 6.

165. Whenever a native subject of the British government is charged with murder, homicide, rape, robbery, arson, violent affray, or any other serious offence,* committed in any place out of the limits of the British provinces;(a) either against the subjects of the British government, or any other persons; and is found in any part of such provinces; the magistrate, in whose jurisdiction the accused person is found, on the charge being so supported under solemn declaration as is required by section 4, Reg. IX. 1807, is to issue process for apprehending or summoning the person accused, under the provisions of that regulation; and, after making such inquiry as the circumstances of the case, and the evidence attainable, may admit, is to report his proceedings to the Governor-General in Council. Reg. V. 1809, sect. 2. cl. 1.

Apprehended without the British provinces.

166. The same rules are applicable, when the native British subject so charged is delivered into the custody of a magistrate in any of the British provinces, wheresoever such British subject may have been apprehended. Reg. VIII. 1829, sect. 2.

167. So also, if a native British subject, accused of a crime committed beyond the Company's territory, make his escape beyond the boundary and be delivered up by the independent state, a reference to Government is necessary before he can be tried. Const. No. 533, 2d query.

Report of the magistrate to government.

168. The report of the magistrate, submitting such proceedings, is to contain full information regarding the offence charged; the place where, and manner in which he may have been apprehended, and the person by whom he may have been delivered into the custody of the magistrate. Reg. VIII. 1829. sect. 3.

Rules for magistrate's procedure pending reference.

169. In such cases the magistrate is to commit the prisoner, or to hold him to bail, according as the nature of the charge in ordinary cases would require; in cases of commitment the

(a) A tract of land having been granted as a jagheer to Maharajah Bajee Row Behadoor, and the operation of the laws and regulations being suspended therein, the provisions detailed in this chapter were specially made applicable to native British subjects, charged with crimes and misdemeanors, committed within the limits of the jagheer, by section 7, Reg I. 1832.

form is to specify, until the orders of government be received; and in cases of bail, the form of the bail-bond is to be in the first instance, to appear before the magistrate on a certain day assigned, and on such subsequent days as the magistrate shall require. Should Government in the latter case direct the accused to be brought to trial, the magistrate is to cause the bail-bond to be renewed in the ordinary form, to appear and take his trial at the court appointed for that purpose. Reg. V. 1809, sect. 2, cl. 2.

Competency of government to direct trial.

170. In cases so referred, as well as in all cases of the like nature, which may in any manner come before the Governor-General in Council, if it appear proper that the prisoner should be brought to trial, the Governor-General in Council is competent to direct, that the prisoner be brought to trial before any of the established criminal courts within the British provinces; and his special order for the purpose is to be deemed full and sufficient authority for the trial, and punishment of such prisoner by the court so appointed; as well as by the Nizamut Adawlut, if the case be referrible. Reg. V. 1809, sect. 3.

Rules for procedure and validity of trial.

171. Such prisoner so brought to trial, after the receipt of the sanction of the Government, is to be tried, and punished or acquitted by the magistrate, or to be committed for trial before the sessions, according to the nature and circumstances of the offence, in the same manner as if the offence had been committed within the limits of the British territories. Reg. V. 1809, sect. 4. Reg. I. 1822, sect. 6.

Record.

172. A copy of the magistrate's letter applying for sanction to proceed to trial, and the answer of government, are to be filed with the proceedings. C. O. No. 4 of vol. 2.

Native British subjects, definition of the term.

173. It being necessary that a definition should be given of the terms "Native subjects of the British government," as used above,—and also that the provisions of the above-quoted regulations should be extended to certain other persons not comprehended therein,—they were declared applicable to the following classes of persons, and to no other.

First. Natural born subjects of the British government in India.

Second. Natives of India, who may have become subjects of the British government in India, by the conquest or cession of the places in which they were born, for acts done by them subsequently to the period of such conquest or cession.

Third. Natives of the foreign states of India, in the civil or military service of the British government in India, while actually in such service, and during six months after they shall have quitted the British territories; or (supposing them to be stationed out of the limits of the British territories) after they shall have quitted the service; but this does not authorize any court to take cognizance of any charge against a sepoy, or other person, for which he may have been already tried by a court martial. Reg. VIII. 1813.

Other persons subject to the same rules.

174. In addition to these classes of persons, the above-quoted provisions are applicable to all persons whatsoever, other than British-born subjects of Her Majesty, who being resident within the Company's frontiers, may have purchased any lands or other immovable property, or hired the same for any period exceeding six months, or who may have otherwise fixed or may hereafter fix their residence in the Company's territories with the intention of settling therein, or who may in any manner have lived and resided therein for a period of not less than six months. Reg. IX. 1822, sect. 2.

Character cannot be divested.

175. A native born within the British territories is considered a native British subject (under the second class described above), although he may have resided in a foreign territory for any number of years. Const. No. 703.

Foreigners committing offences within the British territories.

176. If persons, not being native British subjects, come from an independent state into the Company's territories, and, having committed robbery, or other heinous crime, escape beyond the boundary, such persons, if given up by the foreign state, can be tried by our courts. Const. No. 533, 1st query.

177. If a person, not a British subject, accused of a crime committed within the Company's territories, be seized within those territories, he can be tried without reference to Government. Const. No. 533, 3d query.

In a foreign territory.

178. The Company's courts have no jurisdiction over offences committed by foreigners in a foreign territory. In such cases the Nizamut Adawlut, with the sanction of Government, has directed the prisoners to be delivered over to the nearest *aumil* of the foreign territory, the magistrate making over to that officer a copy of the proceedings held in the case, taking his official receipt for the same, and furnishing the British Resident with a statement of the transaction, in order that he might adopt the necessary measures to secure the punishment of the offenders. N. A. R. vol. 3, pages 110 and 220.

179. A prisoner being an inhabitant of a foreign territory, and charged with an offence committed in that territory, was held not to be amenable to the Company's courts on the ground of his claiming landed property situated within the British territory, of which property however he never had possession. N. A. R. vol. 3, page 151.

Example of the liability of native British subjects, and foreigners.

180. A person, formerly an alien but coming within the provisions of Section 2, Reg. IX. 1822, was forcibly carried off from a village in Bareilly by certain foreigners, and taken to a village situated within the foreign jagheer of Rampore. Seven native British subjects proceeded to the latter village for the purpose of peaceably obtaining his release; but, while there, a dispute arose which terminated in an affray attended with murder. It was determined that the foreigners, who forcibly carried off the man from Bareilly, were liable to be tried by the magistrate of that district. And that with regard to the subsequent affray, the native British subjects concerned therein were also liable to be tried by our courts, if the Government, on a reference under Reg. V. 1809, should think proper to direct such a measure;—but that the foreigners, engaged therein, were liable only to be tried by the laws of the state in which the offence was committed. Const. No. 926.

181. It was decided that the Baiza Baee and her followers, when expelled from her own country, were amenable to the laws and regulations of our Government, civil and criminal, while they resided within our territories. C. O. No. 195 of vol. 2.

Jurisdiction in cases of receiving stolen property.

182. The offence of dacoity taking place within the British territory, and part of the plundered property being found in the houses of persons, natives and inhabitants of a foreign territory, it was held that they were not amenable to the Company's courts for the offence of receiving plundered property; it being presumable, that the offence was committed where the property was found, and not where the dacoity was perpetrated. N. A. R. vol. 2, page 80; and vol. 3, page 149.

183. Under the above regulations, the trials of native British subjects, accused of offences committed in a foreign territory, are illegal, if the permission of Government to bring them to trial has not been previously obtained. N. A. R. vol. 2, pages 10 and 393.

Trial illegal if sanction of government not received.

184. By the Mahomedan law *moostamins* (i. e. persons residing in a foreign country) are justified in making reprisals, by any means in their power, on the sovereign of that country for sums due by himself or his subjects, if he refuse to give redress on a representation of the case. By the regulations quoted, such persons, if subjects of the Company, are liable to be tried and punished for any act of aggression, in like manner as if the offence had been committed within the Company's territories. N. A. R. vol. 1, page 360.

Mahomedan law.

185. Four prisoners convicted of having forcibly carried off property belonging to the Raja of Cachar. *Sentence*, imprisonment and hard labour for seven years. N. A. R. vol. 1, page 360.

Precedents.

186. A prisoner convicted of murder in the Lucknow territory. *Sentence*, death. N. A. R. vol. 2, page 257.

Refugees.

187. A magistrate is competent to apprehend the subject of a foreign state, charged with murder or robbery, or any crime amounting to felony, who may take refuge in the British territory. Const. No. 929.

Magistrate may apprehend.

188. Our requisitions for the surrender of refugees, and our compliance with those of our neighbours, are to be confined to the cases of heinous offenders, such as murderers, highway robbers, &c., leaving the privilege of asylum inviolate as regards debtors, defaulters, and civil and petty offenders of every kind. And the practice should be strictly reciprocal. *Orders of government in* C. O. No. 194 of vol. 2.

Requisitions for surrender.

Extra-regulation provinces.

189. Magistrates are competent to give effect to any sentence passed by criminal courts established for the administration of criminal justice in territories appertaining to the Company's dominions, but not subject to the operation of the general regulations. Reg. IX. 1822. sect. 3. cl. 1.

Execution by magistrates of sentences passed by tribunals in.

190. A warrant, under the official seal and signature of the officer exercising criminal jurisdiction within such territory, is sufficient authority for holding any prisoner in confinement, or for transmitting him for transportation, or for inflicting any punishment defined and prescribed therein. Reg. IX. 1822. sect. 3. cl. 2.

191. In cases of doubt as to the legality of any warrant sent to be executed by any magistrate, or as to the competency of the officer, whose official seal and signature are affixed thereto, to pass the sentence and issue such warrant, a reference of the point is to be made to government, by whose order on the case the magistrate and all other public officers are to be guided as to the future disposal of the prisoner: pending such reference the prisoner is to be detained in custody in such manner and with such restrictions and modifications as are specified in the warrant. Reg. IX. 1822. sect. 3. cl. 3.

If doubt of legality of sentence or competency of officer.

192. The regulations and rules in force for the treatment and security of prisoners confined in jails, are to apply to, and to be of equal force and effect in, the case of prisoners confined under this section, as of convicts detained under the general regulations. Reg. IX. 1822. sect. 3. cl. 4.

Treatment and security by the magistrates of prisoners from.

SECTION II.

OF JURISDICTION IN MILITARY CANTONMENTS, AND OF OFFENCES COMMITTED BY PERSONS ATTACHED TO THE ARMY.

Cantonments.

Limits of

193. By Sections 4 and 5, Regulation III. 1809, it was ordered, that the limits of cantonments, including the military bazars attached thereto, at which any division or corps of the army, or any considerable detachment of troops not being less than half a battalion, were quartered, should be fixed by the commanding officer in concert with the magistrate. This rule applied to all cantonments whether situated at the place of residence of the magistrate, or in any other part of the district. Sections 5 and 6, Regulation XX. 1810, repeated and re-enacted these orders, and required plans of the cantonments and bazars to be prepared in quadruplicate, and one copy to be deposited in the cutcherry of the magistrate, and another at the head-quarters of the station. The same regulation also required (vide sections 7, 8, 9, 10, and 26) that the names of persons trading for the supply of the troops in the station bazars, and bazars of corps, should be registered; but the registry was to be with their own consent; and no person was liable to be dispossessed by commanding officers of land or houses, situated within the bazars, although he should refuse to be registered, or be discharged from the registry.

Persons residing in.

194. A magistrate is not competent, under the provisions of Regulation XX. 1810, to pull down houses in a military cantonment, and eject their possessors, merely on the requisition of the officer commanding the station. Const. No. 1119.

Police in sudder bazars.

195. The support of the police, and the maintenance of the peace within the limits of the cantonments and military bazars, are vested in the commanding officer; who are required to adopt measures, by means of the troops, for preventing the commission of crimes within such limits, and for the apprehension of persons guilty of such acts. Reg. III. 1809, sect. 2. cl. 1.

Police in bazars of corps.

196. The charge of the police, over persons registered as attached to bazars of corps, is vested in the commanding officers of such corps, so long as such persons are bonâ fide carrying on the occupation in respect of which they are so registered. Reg. XX. 1810. sect. 21.

Retainers and dependants of army subject to local regulations of cantonment, &c., and liable to court martial for breach thereof.

197. All persons serving with any part of the army, and receiving public pay drawn by any officer in charge of a public department appertaining to the army, whether lascars, magazine men, kalassies attached to magazines, or any other department or establishment, native doctors, writers, bhistees, puckallies, syces, grass-cutters, mahouts, surwans, or other subordinate servants attached to public cattle, bildars, artificers, or in any other capacity, are (provided they are borne upon the fixed establishment of the department in which they are employed, and not otherwise) subject to be tried by a court martial for all breaches of duty, and for all disorders and neglects to the prejudice of good order and of the local regulations established by the commanding officer. Reg. XX. 1810. sect. 2.

Menial servants of officers ditto.

198. Menial servants of officers within the precincts of any cantonment, garrison, military station, or military bazar, although not in the receipt of public pay, are subject to the local regulations of such cantonment, &c.; and are liable to be tried by court martial for any breach thereof. Reg. XX. 1810. sect. 4.

199. Persons registered as attached to the station bazar, or the bazar of a corps, are subject, while so attached, to the local regulations of such bazar; and are liable to be tried by court martial for any breach thereof. Reg. XX. 1810. sections 8 and 12.

Persons registered in bazars ditto.

Offences committed within Cantonments.

200. If any retainer of the army, of the description mentioned in section 2 of this regulation, or any menial servant of an officer, or any person registered as attached to the sudder or station bazar, is charged with the commission of an inconsiderable assault or affray, or other act immediately tending to a breach of the peace and good order of any garrison, cantonment, or bazar, within the limits thereof, as described in the plans mentioned above,—he is to be tried by a native court martial. Reg. XX. 1810. sect. 15.

Retainers, menial servants of officers, and persons registered in bazars, liable to court martial for petty assaults, &c.

201. If any such person is charged with having committed a petty theft (i. e. theft without violence and outrage, and not exceeding 100 rupees) within the limits of the cantonment or bazar, such charge is to be tried by a native court martial. Reg. XX. 1810. sect. 16.

Ditto for petty thefts.

202. If any such petty offence is committed within such limits by any person not being such retainer of the army, or the menial servant of an officer, or registered as attached to the bazar, the commanding officer is to cause the offender, if found within such limits, to be arrested and sent to the magistrate, who is to inquire into the facts, and punish the offender, in the same manner as in other cases of petty offences cognizable by the magistrate under existing regulations. Reg. XX. 1810. sect. 17.

Any other person committing such offence to be made over to magistrate.

203. In all cases of crimes committed within the limits of garrisons, cantonments, or military bazars, which are not cognizable before a court martial in the manner described above, the offender, whatever be his description, if found within the limits, is to be arrested by the commanding officer, and delivered over to the magistrate. Reg. XX. 1810. sect. 18. Reg. III. 1809. sect. 2, cl. 3.

In the case of all other crimes every offender to be made over to magistrate.

204. The same rules apply to all such petty offences, committed by persons attached to the bazars of corps: provided that when such offences are committed at the distance of above one coss from the stations of the corps or from its actual position on a march, and the offender is taken in the fact, the magistrate has a concurrent jurisdiction, and may proceed against the offender as in other cases, or, at his discretion, remit him to the commanding officer to be tried by court martial. Reg. XX. 1810. sect. 21.

Limits of military and civil jurisdiction.

205. By the above rules the military authority in cantonments extends only to petty offences committed within the limits of a cantonment by a person, who is a retainer of the army, the servant of an officer, or registered as attached to the bazar; the more grievous offences are cognizable by the magistrate exclusively, by whomsoever perpetrated, whether within or without the limits of the cantonment. Const. No. 392.

Construction of the above rules.

206. A sepoy belonging to a detachment at Buxar, having shot and killed a havildar, while mounting guard at the fort gate, held that the case was cognizable by the civil authorities. Const. No. 760.

Example.

207. In all places within the jurisdiction of any civil judicature, (native) officers and soldiers accused of capital crimes, or of violence, or of offences against person or property, punishable by such civil judicature, are to be delivered over to a magistrate to be proceeded against according to law. And all officers and soldiers are required to assist the officers of justice in apprehending and securing any person so accused. Act XX. 1845. Article 111.

Offences not military committed by native officers and soldiers.

Military offences committed by military guards in charge of convicts.

208. The provisions of the regulations which regard guards guilty of neglect of duty, are not applicable to military guards from provincial battalions, or from any regular corps of the army. If any such guard is guilty of wilful neglect in guarding the prisoners under his charge, or of connivance at the escape of a prisoner, or of any other act of a criminal nature in the discharge of his duty, the magistrate is to deliver him over to his commanding officer with a charge in writing, that he may be tried by a court martial. *Beng. Ben.* Reg. XI. 1806. sect. 10. cl. 2. *Ced. Prov.* Reg. VIII. 1805. sect. 14. cl. 5.

Application and restriction of the above rule.

209. The above rule is to be observed, with respect to any other offence involving a breach of military duty, and properly cognizable by courts martial;—but does not apply to any criminal charge against such guards or other sepoys, which does not involve a breach of military duty, and the cognizance of which therefore appertains to the civil courts. *Beng. Ben.* Reg. XI. 1806. sect. 10. cl. 3. *Ced. Prov.* Reg. VIII. 1805. sect. 14. cl. 6.

Rule, when case is made over to the magistrate.

210. The commanding officer of a military cantonment, when required to make over the offender to the magistrate, is not competent to take the information of the prosecutor and witnesses on oath. Const. No. 1044.

Jurisdiction of magistrate in cantonments.

When a complaint against any resident in cantonments may be made to the magistrate.

211. Any person, having a charge or complaint to prefer against any individual resident in any cantonment or military bazar, who has not been already apprehended by the persons entrusted therein with the support of the police, or if the charge or complaint is of a nature not to authorize those officers, under the above rules, to interfere in it,—may prefer his complaint directly to the magistrate, who is required to proceed with respect to it under the general regulations, in the same manner as if the offence had been committed in any other part of his jurisdiction. Reg. III. 1809. sect. 3. cl. 1.

Power of civil authorities to serve processes in military stations.

212. Under the foregoing clause the magistrates are of course empowered to issue their warrants and summonses against any persons residing in the cantonments and military bazars, in the same manner as if such persons resided in any other part of their jurisdiction; —and the commanding officers are required to afford every protection to the officers of the civil authorities in the discharge of the duty entrusted to them, whether any special application has been made to them for such aid or support, or otherwise. Reg. III. 1809. sect. 3. cl. 2.

Arrest.

213. In all cases in which it is necessary to execute any process of arrest, criminal or civil, within the limits of a garrison, cantonments, military station, or military bazar, (the process of the supreme court only excepted) the officers entrusted with the execution of such process of arrest are in the first instance to carry it to the commanding officer, or in his absence to the senior officer actually present: and such officer, upon such process being produced to him, is to back the same with his signature, and is forthwith to use his utmost endeavours to cause the person named in such process to be discovered, and if within the limits of the garrison, &c. to be arrested and delivered to the civil officer. But the above does not prevent the service by the civil officer, in the usual way, of summonses, subpœnas, or other process of mere citation without arrest. Reg. XX. 1810. sect. 19.

Processes short of arrest.

Military Courts.

Witness refusing to be sworn before a court martial for the trial of European British subjects.

214. Whenever a witness in attendance before a general court martial or other military court (for the trial of European British subjects) duly authorized to administer an oath, refuses to be sworn, and the court is of opinion that the testimony of such witness is essential, and that there is no sufficient reason to exempt him from taking the oath, the judge advocate

general, or other officer conducting the proceedings of the court, is authorized to forward such witness with a written statement to the magistrate, within whose jurisdiction the court is held;—and the magistrate is to make such enquiries into the case as may satisfy him, that the witness ought or ought not to be exempted from taking an oath under the provisions of Reg. L. 1803. In the latter case, he is to proceed in the same manner as if the refusal to give evidence on oath had taken place in his own court;—in the former, he is to certify the same to the judge advocate general, or other officer above referred to, and is not to impose any penalty on such witness. Reg. XX. 1825. sect. 4.

Witness refusing to attend, or to be sworn, or committing perjury, before a court martial for the trial of natives.

215. Any person not amenable to the articles of war (for the native army), who, having been summoned upon any court martial, refuses or neglects to attend, or who attending refuses to be sworn, or to make affirmation, or to answer any lawful question, or gives such testimony as, if given in a criminal court, would render him guilty of perjury, or who induces any other person so to offend, is to be delivered to a magistrate to be proceeded against according to law. Act XX. 1845, article 62.

Ditto before a court of requests for the native army.

216. Witnesses omitting to attend (courts of requests for the native army), refusing to give evidence, or committing perjury, and persons suborning witnesses to commit perjury, are to be tried and punished, if not amenable to articles of war, in the nearest of the Company's courts for the administration of criminal justice (whether such court have ordinarily jurisdiction over such person in criminal matters or not), in like manner as if such offence had been committed in regard to any trial before such nearest court. Act XI. 1841, sect. 6.

Contempt of court martial for trial of a native officer or soldier.

217. Any person using menacing or disrespectful words, signs, or gestures, in the presence of a court martial (held on a native officer or soldier) then sitting, or causing any disturbance or riot, so as to disturb their proceedings,—if not amenable to the articles of war (for the native army), is to be delivered over to a magistrate to be proceeded against according to law. Act XX. 1845, article 63.

Ditto of court of requests for the native army.

218. Any person, civil or military, European or native, using menacing words, signs, or gestures, or otherwise interrupting (whether being personally present or not) the proceedings of any military court of requests (for the native army), is punishable, if not amenable to articles of war, in the nearest of the Company's courts for the administration of criminal justice, (whether such court have ordinarily jurisdiction over such person in criminal matters or not) in like manner as if the offence had been committed in regard to any proceeding of the court to which it is so referred. Act XI. 1841. sect. 7.

Magistrates required to give effect to sentences of military tribunals

219. A magistrate is competent to give effect to the sentence of a general court martial, adjudging imprisonment with labour among the convicts of the civil power, on the offender being delivered into his custody, and the sentence being certified to him for the purpose of his giving it effect by the judge advocate general, or his deputy under the authority of the commander in chief; and the sentence so certified is the magistrate's warrant and authority for carrying it into effect according to the terms of it. Reg. IV. 1820, sect. 2.

220. Whenever, under Act XXIII. 1839,[a] any sentence of a court martial adjudges imprisonment, or imprisonment with labour, for any offence, it is the duty of every judge, magistrate, sheriff, or other officer in charge of any gaol, to give effect to such sentence on the offender being delivered into his custody, and on being furnished with a copy of the sentence by the officer commanding the division, garrison, regiment, or detachment, to which the offender belongs. Act II. 1840.

221. Whenever a court martial adjudges imprisonment with labor, or with solitary confinement, or both, or whenever the sentence of such court is commuted to any such imprisonment, it is the duty of every judge, magistrate, sheriff, or other officer in charge of a jail, to give effect to such sentence, on the offender being delivered into his custody, and on being furnished with a copy of the sentence by the officer commanding the division, field force, district, or brigade, within which the trial is held. Act XX. 1845. article 81.

A person tried by court martial not liable to civil courts.

222. A person who has been tried for any offence by a court martial, under the authority of the articles of war, cannot be tried for the same in any other court whatever. Act XX. 1845, article 151.

Trial of European British subjects attached to the army.

Such persons, when apprehended by magistrate on criminal charges, to be delivered to commanding officer.

223. If an European British subject, apprehended by or brought before a magistrate on a charge of murder, rape, robbery, theft, or other criminal offence, is found to have been, at the time when the offence was committed, a commissioned, or non-commissioned officer, or soldier, serving with any body of troops in the service of her Majesty, or of the Company, at any place not within the territories subject to the presidency of Fort William, or at any place within such territories which is situated above 120 miles from the aforesaid presidency, —or to have been, when the offence was committed, a person attached to such body of troops in any of the capacities specified in sections 45 and 60 of Statute 4 George IV. cap. 81[b],— it is the duty of the magistrate, instead of proceeding to hear evidence to the charge, to deliver over such person so charged, together with a statement of the charge, to the commanding officer of the regiment, corps, or detachment, to which such person belongs, or to the commanding officer of the nearest military station, for the purpose of his being brought to trial before a court martial under the provisions of the said act of parliament. Reg. XX. 1825. sect. 2, cl. 1.

Magistrate to assist in apprehending all such persons amenable to trial by court martial.

224. It is the duty of the magistrate, on a written application being made to him for that purpose by the commanding officer of any regiment, corps, or detachment, stationed or employed as specified in the preceding clause, to use his utmost endeavour for the apprehension

(a) This act empowers courts martial in certain cases to sentence soldiers of the native army of the Company to imprisonment with or without hard labour for two years, if a general court martial, or one year if a garrison or line court martial, or six months if a regimental or detachmental court martial.

(b) The following are the persons enumerated in the two sections quoted : all officers and persons serving and hired to be employed in the artillery, and in the several trains of artillery, and in the department of the engineers, and in the corps of engineers, and as military surveyors or draftsmen, or in the corps of sappers and miners, or pioneers, and all persons under the ordnance, and all apothecaries, veterinary surgeons, medical storekeepers, hospital stewards, and others serving on the medical establishment of the army, licensed sutlers and followers :—all officers and persons commissioned or employed in the commissariat department, or as storekeepers, and all civil officers under the ordnance, and all placed under the command of any general or other officer.

of any British officer, non-commissioned officer, soldier, or other person of the description therein alluded to, who is charged with the crime of murder, rape, robbery, theft, or other criminal offence, and also to give his assistance and that of the officers under his control in securing the person so accused. Reg. XX. 1825. sect. 2, cl. 2.

Processes for the attendance of witnesses before courts martial to be enforced by the magistrate.

225. The judge advocate-general, or deputy judge advocate, or other person appointed to conduct the proceedings of any court martial, assembled for the trial of offences under the said act of parliament, is competent to transmit to the magistrate, within whose jurisdiction persons whose attendance is required may reside, any warrant, summons, or other process for the attendance of such person;—and it is the duty of the magistrate to give his assistance and that of the officers under him in the execution of such process, and generally to aid and assist in the execution of all processes issued by such courts martial. Reg. XX. 1825. sect 2, cl. 3.

Magistrate not to inquire into charges against such persons, unless the military authorities neglect to bring them to trial;—in which case he is to report to Government.

226. Magistrates are prohibited from receiving, and inquiring into any criminal act of the nature described in sect. 2 of Statute 4 George IV. cap. 81[a], which is preferred to them against any British commissioned or non-commissioned officer, soldier, or other person attached to the army, who has been regularly brought to trial under the provisions of the said act, and acquitted or convicted by the sentence of a court martial of such offence: provided however that when it is ascertained by the magistrate, on due inquiry, that any person accused of such offence, and subject to court martial, has not been brought to trial for such offence before a court martial, and that no effectual proceedings have been taken, or have been ordered to be taken against him, then it is the duty of the magistrate to report the circumstance for the information and orders of the Governor-General in Council; who may direct the case to be proceeded upon in the ordinary course of law; and the magistrate, if so authorized, is competent to proceed against the offender under the provisions of the regulations. Reg. XX. 1825. sect. 2, cl. 4.

These rules do not apply to British subjects not attached to the army.

227. But magistrates are not restricted by the above rules, either in their ordinary capacity of magistrates, or as justices of the peace, from proceeding against all British subjects charged with criminal offences who are not attached to the army, or subject to be tried for such offences by a court martial. Reg. XX. 1825, sect. 2, cl. 5.

Nor to offences committed by persons attached to the army within 120 miles of the presidency.

228. The above rules, as far as they relate to criminal offences committed by persons attached to the army, being British subjects, are not to be held to apply or to be in force, when such offences are committed by such persons attached to any body of troops stationed in the garrison of Fort William, or at Barrackpore, Midnapore, Dum-Dum, or at any other place within the territories under the presidency of Fort William, not situated at a greater

(a) The criminal acts described in the section quoted are,—wilful murder, theft, robbery, rape, or any other crime which is capital by the laws of England, or using violence, or committing any offence against the person or property of any subject of his Majesty, or any other person entitled to his Majesty's protection, or to the protection of the respective governments of the East India Company, or any state in alliance with the said Company, within the territories of any foreign state, or in any country under the protection of his Majesty or the said Company, or at any place in the territories under the government of the said Company situated above 120 miles from the said presidencies respectively.

distance than 120 miles from the said presidency. In all such places, the powers and authorities vested by law in the magistrates and justices of the peace are in full force and effect. Reg. XX. 1825. sect. 2, cl. 6.(a)

SECTION III.

OF COMPLAINTS.

Magistrate.

229. The magistrate should himself hear and decide on every petition, and should pass an order on it in the presence of the petitioner: he should not make over petitions, when first presented, to law-officers and sudder ameens for report. Const. No. 627.

230. All complaints, or charges with the orders thereon, are to be recorded in the office of the magistrate. *Beng.* Reg. IX. 1793. sect. 23. *Ced. Prov.* Reg. VI. 1803. sect. 22.

HEINOUS OFFENCES.

On the truth of complaint being deposed to by complainant, the magistrate to issue warrant.

231. Upon a complaint being preferred in writing to a magistrate, against any person subject to his jurisdiction, for treason; murder; robbery; house-breaking; theft; setting fire to a village, house, or other building; counterfeiting the coin; or any other crime declared not to be bailable; or though not so expressly declared involving such dangerous breach of the peace, or degree of criminality, as from the facts deposed to before the magistrate may appear to require the immediate apprehension of the accused, and to render the admission of bail unsafe and improper;—the magistrate on the truth of the charge being deposed to by the complainant (or as is required below in paras. 233 and 234), is to issue a warrant for the apprehension of the accused in prescribed form,* and directed to the nazir of the criminal court. Reg. IX. 1807. sect. 3, cl. 1 and 2.

* *v. Appendix A, No.* 1. *and Book* 1, *Chap.* 4, *Sect.* 1.

(a) A limit to the jurisdiction of courts martial is distinctly marked in the rules quoted above, and it would seem easy to assign to each case its specific class; but in fact many cases arise, in which it is as difficult to distinguish the legal as the most expedient jurisdiction. It is doubtless impossible to provide against all contingencies; offences which cannot be strictly called military, may yet partake so much of their nature, that no punishment could be adjudged on adequate grounds under the civil code. *Capt. Simmons*, in his work on the practice of courts martial, says: "The general jurisdiction of courts martial extends to the trial of the persons and for the offences, declared under the power of the mutiny act, whether they be committed at home or abroad; and also, in default of a competent court of civil judicature, to the trial of military persons for all offences against the municipal law of the land; for which civil offences they would not otherwise be amenable to courts martial, except indeed officers, in a limited degree, so far as the honor or discipline of the army may be affected." The general principle of the subordination of the military to the civil power is thus stated by *Mr. DeLolme:* "All courts of a military kind are under a constant subordination to the ordinary courts of law. Officers who have abused their private power, though only in regard to their own soldiers, may be called to account before a court of common law, and compelled to make proper satisfaction. Even any flagrant abuse of authority committed by members of courts martial, when sitting to judge their own people, and determine upon cases entirely of a military kind, makes them liable to the animadversion of the civil judge. To the above facts concerning the pre-eminence of the civil over the military power at large, it is needless to add, that all offences committed by persons of the military profession, in regard to individuals belonging to the other classes of the people, are to be determined upon by the civil judge. Any use they may make of their force, unless expressly authorized and directed by the civil magistrate, let the occasion be what it may, makes them liable to be convicted of murder for any life that may have been lost. To allege the duties or customs of their profession in extenuation of any offence, is a plea which the judge will not so much as understand. Whenever claimed by the civil power, they must be delivered up immediately."

If the case is bailable what warrant.

232. If the magistrate, in any bailable case of the nature above described, judge it proper to authorize the officer, to whom the warrant is committed, to receive bail for appearance (with or without security for keeping the peace), it shall be so specified in the warrant, with the extent of the bail (and security) required, in prescribed form.* Reg. IX. 1807. sect. 3, cl. 3.

* *v. Appendix A, No. 2: forms of bail and security bonds are also given in the Appendix Nos. 3 and 4.*

The complainant himself need not appear in certain cases;

233. The attendance and deposition of the complainant is not indispensable in preferring a criminal charge, when sufficient reason can be assigned for his non-attendance. If the complainant be unable to attend in person, or if he were not himself present at the commission of the act complained of, his written plaint presented by an authorized agent,† and corroborated by the deposition on oath or solemn declaration of one or more persons present, or otherwise personally informed of the truth of the complaint, shall be sufficient grounds for receiving the same, and for issuing process against the party accused, unless the magistrate see reason for making the previous inquiry authorized as below. Reg. IX. 1807, sect. 4.

† *v. Section infrà, "Of Mookhtars."*

but must in ordinary cases, without reason shown to the contrary.

234. But, in ordinary cases, individuals having charges of a criminal nature to prefer, are to attend in person to institute and conduct the prosecution before the magistrate, and likewise before the sessions court; and agents are not to be permitted to interfere in the conduct of such prosecutions, unless substantial reasons be shown (to be recorded on the proceedings of the magistrate) why the prosecutor himself should not attend to carry it on in person. The Nizamut Adawlut and session judge are to restrain any ill-judged exercise of the discretion vested in the magistrate with respect to this point. Reg. III. 1812, sect. 3.

Warrant not to be issued unless the truth of complaint is deposed to on oath, or on credible information;

235. But no warrant for apprehension is to be issued at the instance of a complainant, unless the truth of the charge is deposed to on oath (or solemn declaration) either by the complainant himself or by some other credible person. This however is not to restrict a magistrate from issuing process to apprehend a person suspected of having committed a heinous crime, or for whose apprehension sufficient cause may appear, upon the report of a police officer, or upon any other credible information. Reg. IX. 1807. sect. 4.

and until after examination of prosecutor as to specific facts.

236. And the magistrate is not to issue any process without previously examining the prosecutor as to the specific facts of the case, and satisfying himself that adequate grounds exist for proceeding against the accused. Reg. III. 1812. sect. 2, cl. 6.

Session judge cannot prohibit the issue of warrant.

237. A session judge cannot order a magistrate not to issue process to apprehend a released convict, or other particular individual. Const. No. 1100.

If the magistrate distrust the truth of the complaint, he may make previous inquiry.

238. If the magistrate see cause to distrust the truth of the complaint, whether from the nature of the charge, as manifestly improbable, exaggerated, or vexatious; or from the circumstances deposed to before him, considered with the known situation and character of the person accused; and if the immediate arrest of the party complained against appear unnecessary and objectionable,—the magistrate is authorized to postpone issuing his warrant for apprehension, and to cause a previous inquiry to be made, either by means of the local police officers, or in such other mode as he shall judge most proper for the purpose of ascertaining the truth or falsehood of the complainant's allegations. If the result of the inquiry induce the magistrate to believe the charge well founded, and the offence be of the nature described in section 3‡, he is to issue his warrant for the apprehension of the accused, as therein directed. But if the accusation appear groundless, or though well founded if the offence be

‡ *See above* ¶ 231.

of a bailable nature, he is, in the former case, to dismiss the complaint, or, in the latter case, to direct bail to be taken from the accused for appearance in person, or by vakeel, to answer the charge. Reg. IX. 1807. sect. 5.

BAILABLE OFFENCES.

If the truth of the charge is deposed to, magistrate is to issue summons.

239. Upon a complaint in writing being preferred to a magistrate, against a person subject to his jurisdiction, for any bailable crime or misdemeanour, which does not appear to require the immediate apprehension of the accused, the magistrate, upon the party complaining making oath (or solemn declaration) to the truth of the complaint,—or without such oath (or declaration), if satisfactory reason be assigned by the complainant for not attending to make the same, and the truth of the charge be deposed to by some other credible person,—is to issue a summons,* specifying the offence charged, and, according to the circumstances of the case, requiring the accused to appear in person or by vakeel to answer the charge on or before a certain day. Bail for his appearance may be required if deemed necessary.† Reg. IX. 1807, sect. 6.

* *v. Book* 1' *Chap.* 4, *sect.* 2' *and Appendix A' No.* 5.
† *v. Appendix A, Nos.* 6 *and* 3.

Warrant to be issued in cases of persons neglecting summons.

240. If the accused person, on whom a summons has been so served, does not attend in person or by vakeel, and give bail (if required) according to the exigence of the summons within the period limited by it, the magistrate is to issue a warrant under his official seal and signature for the apprehension of the accused; and if he abscond, is to proceed against him in the manner directed by Sect. 4, Reg. XI. 1796 for *Beng.* and *Ben.*, and Sect. 4, Reg. III. 1804 for *Ced. Prov.* (as modified by Sect. 26, Reg. XX. 1817).‡ Reg. IX. 1807, sect. 7.

‡ *v. Evasion of process, Book* 1, *Chap.* 4, *sect.* 11.

PETTY OFFENCES.

To be preferred in the first instance to the magistrate.

241. All complaints or prosecutions for adultery, fornication,* calumny, abusive language, slight trespass, or inconsiderable assault, whether preferred in person or by vakeel, are to be preferred in the first instance at the cutchery of the magistrate, within the limits of the jurisdiction of whose court the offence has been committed. This does not apply to cases of maihem, actual affray, or tumultuary assemblies. Reg. VII. 1811. sect. 3.

* *Rape is included in the original, but v.* ¶ 244.

And not to be referred to the police.

242. Magistrates are strictly prohibited from referring any such trivial cases to their police officers for investigation and report. All investigations for the purpose of ascertaining the truth or falsehood of such charges are invariably to be conducted by the magistrate in person, or his assistant, aided so far as is authorized by the existing regulations by the native officers attached to his sudder cutchery. Reg. VII. 1811, sect. 6.

Police not to take cognizance.

243. Police officers are not to take cognizance of such cases, and are to refer persons preferring such to the magistrate's court, recording the particulars in the thana diary. Reg. XX. 1817. sect. 12. cl. 1 and 2.

Example.

244. Rape is among the offences which the magistrate is prohibited from referring to the police by Reg. VII. 1811; but it is not mentioned in sect. 12. Reg. XX. 1817, among the charges not cognizable by them. Such case may now therefore be legally referred to them for investigation, or may be preferred directly at the thannah. Const. Nos. 1174 and 1365.

Charge can be laid without petition by deposition on oath.

245. In such cases, if the complaint is brought before the magistrate by the proper complainant in the course of a judicial investigation in a separate case, charge by petition is not necessary. (This was held in a case of the murder of a wife by her husband in which the

prisoner accused the deceased of committing adultery, and the magistrate took up the charge of adultery against the paramour on the deposition on oath of the prisoner.) Const. No. 1199.

246. In such, as well as in more heinous cases, the magistrates are strictly prohibited from issuing any process without previously examining the prosecutor as to the specific facts of the case, and satisfying themselves that adequate grounds exist for proceeding against the accused party. If the magistrate see grounds to distrust the truth of the charge, previously to issuing process against the accused, he is to summon the witnesses named by the prosecutor, or as many of them as he may judge proper, and examine them as to their knowledge of the facts and circumstances; but inquiries of this nature are on no account to be committed to the police. On such occasions, the rules* contained in the preceding clauses of this section regarding the payment of the subsistence of witnesses are to be duly enforced. Reg. III. 1812. sect. 2. cl. 6.

Magistrate is to satisfy himself of the grounds of the charge by examining the prosecutor, before issuing process; and, if he distrusts the truth of the charge, the witnesses.

* *v. Section* 6, "*Of witnesses.*"

247. The practice adopted by a magistrate of summoning only one defendant in the first instance, and postponing the summons of the others until he had taken the evidence for the prosecution, was condemned as not being strictly conformable to the regulations; and the authorities were required to adopt every possible means to prevent the indiscriminate summons or apprehension of persons charged with petty offences on groundless suspicion and without sufficient cause. C. O. Nos. 19 and 33 of vol. 2.

Indiscriminate summons to be avoided.

248. In order to accomplish this, a magistrate required his assistants to embody in a proceeding the proof adduced against the accused previous to issuing a summons for their attendance; and he directed the uncovenanted officers to abstain from summoning the accused until they had submitted such proceeding and the original depositions to himself. C. O. No. 63 of vol. 2.

Measures taken to avoid such by subordinates.

249. In cases of a trivial nature, such as abusive language, slight trespasses, and inconsiderable assaults or affrays, in which there may be no reason to apprehend that the accused will abscond, bail for appearance is not to be required in the first instance; but may, at any time during the investigation of the charge, be called for by the magistrate, if circumstances render it necessary. Reg. IX. 1807. sect. 8.

Bail not to be required in the first instance.

Police officers.

BAILABLE OFFENCES.

250. On a complaint being preferred in writing to a darogah, or other officer of police authorized to receive the same, against a person subject to his jurisdiction, for any bailable* crime or misdemeanor cognizable by the police, and which does not require the immediate apprehension of the accused, the police officer receiving such complaint, upon the complainant making oath or declaration to the truth of the complaint,—or without such oath or declaration, if satisfactory reason be assigned by the complainant for not attending to make the same, and the truth of the charge be deposed to on oath or solemn declaration by some other credible person,—is to issue a summons†. Reg. XX. 1817. sect. 24, cl. 1.

On the truth of the charge being deposed to, to issue summons.

* *v.* ¶ 254.

† *v. Appendix A, No.* 10.

251. If the charge is of a serious nature, the police officer may require bail, to be specified in the summons;‡ but it is in no case to exceed what may be sufficient to prevent the parties absconding before the case comes before the magistrate, who is then to issue such further process or order as he may judge proper. Reg. XX. 1817. sect. 24. cl. 3.

In serious case bail may be required.

‡ *v. Appendix A, No.* 11.

If summons is neglected, warrant to be issued.

* *v. Appendix A, No.* 12.

252. If an accused person, on whom a summons has been served, does not attend in person or by vakeel, and give bail (if required) according to the exigency of the summons, within the period limited by it, the police officer is to issue a warrant* for his apprehension. Reg. XX. 1817. sect. 24, cl. 4.

HEINOUS OFFENCES.

On the truth of the complaint being deposed to, to issue warrant;

† *For theft and burglary, see special rules in book* 2, *chap.* 2, *sect.* 12.

253. Upon a complaint being preferred in writing to a darogah, or other police officer authorized to receive the same, or on the receipt of credible information, whether given by confessing prisoners against accomplices, or by other persons against any person subject to his jurisdiction, for any crime of a heinous nature,—such as murder, robbery, house-breaking,† theft,† maiming, wounding, arson, counterfeiting the current coin, or knowingly uttering base coin, or any crime involving a dangerous breach of the peace, such as a violent affray, or assembling persons to commit an affray, or any similar offence requiring the immediate apprehension of the offender,—and on the complainant, or other credible person acquainted with the case, deposing on oath (or solemn declaration) to the truth of the complaint,—the darogah is to examine the party deposing regarding the circumstances of the case; and on his being satisfied from the particulars communicated that there are grounds to believe the charge well-founded, and that the immediate apprehension of the offender is neccessary to the ends of justice, he is to cause the accused to be apprehended by a warrant,‡ and sent in safe custody to the magistrate within 48 hours after his apprehension, unless any special reason appear, why the issue of such process should be stayed, until the charge is reported for the orders of the magistrate, in which case such report is to be made without delay. Reg. XX. 1817. sect. 25, cl. 1.

‡ *v. Appendix A, No.* 12.

unless in special case.

In what cases bail may not, and may be taken.

§ *v. Appendix A, No.* 13.

254. Persons charged with murder, robbery, house-breaking, theft, arson, counterfeiting the coin, maiming or serious wounding where the life of the person wounded is in danger, are not to be admitted to bail, if there are reasonable grounds for believing such persons guilty;—but in all other cases, if sufficient bail is tendered for appearance before the magistrate, the police officer is to accept such bail,§ and immediately to release the person apprehended. Reg. XX. 1817. sect. 25, cl. 8.

Persons wounding or slaying in self-defence, not to be proceeded against.

255. Persons who wound or slay murderers, robbers, or thieves, in their own defence, or in defence of their property, are not to be proceeded against or placed in restraint, or required to give bail, except under special orders of the magistrate. Police officers violating this rule are to be dismissed. Reg. XX. 1817. sect. 25, cl. 10.

Security to keep the peace may be required in addition to bail.

‖ *v. Appendix A, No.* 14.

256. In cases of manifest necessity, when the police officer is apprehensive of danger to the public tranquillity by the enlargement of a person, arrested on a charge of a bailable offence, without security for his peaceable conduct, he may require from him security to keep the peace, in addition to bail, the surety (or sureties) executing a recognizance‖ in an amount to be regulated by the circumstances of the case, and the condition of the person executing the same. Reg. XX. 1817. sect. 25, cl. 11.

Subsequent Proceedings

Particulars of the act complained of to be recorded.

257. The magistrates, upon receiving any charge, are to be careful to ascertain from the complainant, and to record upon their proceedings, on what day of the month, in what year, and at what time of the day or night, the act complained of was committed. *Beng.* Reg. IX. 1793, sect. 6. *Ced. Prov.* Reg. VI. 1803. sect. 6.

258. Upon the prisoner being brought before the magistrate, he is to enquire into the circumstances of the charge, and to examine the prisoner, and the complainant, and also such other persons as are stated to have any knowledge of the crime or misdemeanor alleged against the prisoner, and to commit their respective depositions to writing. The complainant and the witnesses are to be examined on oath, but the prisoner shall not be required to swear to the truth of his deposition. *Beng.* Reg. IX. 1793. sect. 5. *Ced. Prov.* Reg. VI. 1803. sect. 5.

Course of inquiry.

259. Magistrates are also, in all cases, to make full inquiry into every circumstance likely to lead to the ascertainment of the truth, and are competent to exercise their discretion in taking evidence on behalf of the person accused, with a view to afford him an opportunity of establishing his innocence, before proceeding to commit him to take his trial at the sessions. Reg. VIII. 1830. sect. 2, cl. 1. *See also* C. O. No. 54 of vol. 2, paras. 13 and 14.

260. After this inquiry, if it appear to the magistrate that the crime or misdemeanor charged against the prisoner was never committed, or that there is no ground to suspect him to have been concerned in the committing of it, the magistrate is to cause him to be forthwith discharged, recording his reasons for releasing him. On the contrary, if it appear to the magistrate that the crime or misdemeanor was actually committed, and that there are grounds for suspecting the prisoner to have been concerned in the perpetration of it, the magistrate is to cause him to be committed to prison, or held to bail (according as the offence is bailable or not), to take his trial at the sessions; and is to bind over the complainant to appear and carry on the prosecution, and the witnesses to attend and give their evidence. *Beng.* Reg. IX. 1793. sect. 5. *Ced. Prov.* Reg. VI. 1803. sect. 5. (a)

Prisoner to be released, or committed according to the evidence.

261. Magistrates are competent, of their own authority, notwithstanding the existence of grounds of suspicion, to release any person charged before them with any crime or misdemeanor, whenever, from the whole of the evidence adduced in support of the charge, and that adduced in behalf of the party charged, there does not appear a reasonable probability of conviction under a committal for trial before the sessions. Reg. VIII. 1830. sect. 2. cl. 2.

But not to be committed if no probability of conviction.

262. All bail-bonds for prisoners released upon bail, and the recognizances required to be taken from prosecutors and witnesses, are to be for a specific sum, the amount of which is to be determined by the magistrate, upon a due consideration of the case and the circumstances and situation in life of the parties, and are to contain a clause declaring the amount forfeited to government in the event of the condition of it not being performed. *Beng.* Reg. IX. 1793. sect. 5. *Ced. Prov.* Reg. VI. 1803. sect. 5.

Bail-bonds for prisoners released upon bail, and recognizances of prosecutors and witnesses.

263. In all cases investigated by the magistrate, no intermediate proceedings of length are to be admitted. In the event of its being necessary to require further investigation by the police, or the attendance of further evidence, it will be sufficient to pass an order to that effect in as many words, without entering into any detail of the facts of the case. C. O. No. 138, of vol. 3, rule 1st.

Written proceedings,—on further enquiry;

264. In the case of conviction, a short record of the grounds of conviction and a clear statement of the charge are to be entered in the final roobakaree, with a list of the witnesses examined; but it is not necessary to insert lengthened details of the facts (which may

On conviction;

(a) For the rules to be observed in making commitments to the sessions, see subsequent section "Of commitments."

be gathered from the record) and abstracts of the reports and proceedings of the police. C. O. No. 138 of vol. 3, rule 2nd.*

* *For form v. Appendix C, No.* 1.

On acquittal;

265. In cases of acquittal it is enough to record that the charge is not proved, and the prisoner consequently acquitted. In heinous cases it may be added that, in the event of other evidence being produced against the person discharged, proper orders will be passed. C. O. No. 138 of vol. 3, rule 3rd.†

† *For form v. Appendix C, No.* 2.

On commitment.

266. In cases committed to the sessions, all that is necessary to be recorded is the charge preferred, a list of witnesses examined, and the charge on which the prisoner is committed. C. O. No. 138 of vol. 3, rule 4th.‡

‡ *For form v. Appendix C, No.* 3.

Malicious, &c., complaints.

If of petty offence within the competence of the lowest court.

267. When complaints brought before a magistrate for petty offences, such as abusive language, calumny, inconsiderable assaults, or affrays, or petty thefts,* appear to him to be litigious, vexatious, or groundless, he is authorized to punish the complainant by imprisonment not exceeding fifteen days, or fine not exceeding fifty rupees—unless the offender is an actual proprietor of land paying an annual revenue to government of more than ten thousand rupees, or a proprietor of ayma land paying a quit revenue to government exceeding five hundred rupees per annum, or of lakhiraj land the annual produce of which is above one thousand rupees, in which cases the offender is liable to a fine not exceeding two hundred rupees. *Beng.* Reg. IX. 1793. sect. 10. *Ced. Prov.* Reg. VI. 1803. sect. 10.

* *i. e. the offences then within the competence of the magistrate.*

Punishment within the power of the magistrate on *any* such complaint.

268. Whenever any charge upon investigation proves manifestly malicious, vexatious, or unfounded, the magistrate may, in extension of the above punishment, sentence the person by whom the charge has been preferred to such period of imprisonment, not exceeding six months, as on consideration of the apparent motives and tendency of the charge appears proper. Reg. VII. 1811. sect. 5.

Construction of the above powers.

269. The punishment under the latter provision cannot be inflicted *in addition* to that prescribed in the former;—the maximum would be 6 months' imprisonment, *or* a fine of fifty rupees (except in the cases of the particular classes noted, in which the fine may be two hundred rupees.) Const. No. 459.

Limitation of cognizance.

Magistrate cannot punish for such complaint laid before collector.

270. The power of the magistrate in cases of this nature is restricted to the cognizance and disposal of those only that have been primarily instituted before him. He is not competent therefore to award punishment for a false complaint made before the revenue authorities, no case connected with such complaint having originated in his court. Const. No. 1220.

Police how to act in such cases.

271. If, upon inquiry by police officers, a complaint appears to be false and malicious, the darogah is to report the circumstances to the magistrate, and to require the complainant to furnish bail for his appearance before the magistrate; in the event of his not conforming to such requisition, he is to be forwarded under custody to the foujdaree court. Reg. XX. 1817. sect. 23, cl. 3.

The complaint must be on oath.

272. A person preferring a false and malicious complaint before a darogah, but not sworn to the truth of it, is not liable to punishment under the above provisions. Const. No. 1189.

273. The power vested in the magistrate by these provisions should be exercised with the greatest discretion. Session judges can receive appeals from the magistrate's decisions and pass such orders therein as they may think just and proper. Const. No. 610.

Magistrate to use discretion.

274. The commissioner of circuit was informed that he was not competent, in that capacity, to fine a person under section 5, Reg. VIII. 1825, (which provided for the punishment of persons bringing false and malicious charges against an European public officer, but is repealed by Act XXVI. 1839); but that, with regard to the complaint against the nazir and peons of the magistrate's office, he possessed, as superintendent of police, the powers of magistrate in the punishment of false and malicious complaints. Const. No. 754.

If against an European public officer,

power of superintendent of police.

275. A session judge is not at liberty, in a case of commitment, to punish the prosecutor for a groundless and malicious complaint, as the very fact of commitment affords sufficient presumption that the complaint was not of that character;—though he is competent to commit him and his witnesses for perjury, in the event of his seeing reason to believe that a false accusation has been preferred on oath, and an attempt made to substantiate it by false evidence. But in the case of appealed prosecutions brought by private individuals before the session judge, he can exercise the same power as a magistrate in punishing such complaints. Const. Nos. 528 and 530.

Judge cannot punish in a case committed to the sessions.

But may in appeals.

276. A merely litigious appeal is not punishable by a magistrate; but if a prosecutor, who has been dismissed by a subordinate court, persist in bringing before a magistrate a charge evidently malicious or greatly exaggerated, it would be competent to that functionary to punish him under sect. 5, Reg. VII. 1811. Const. No. 1208.

A merely litigious appeal not punishable.

277. A false deposition on oath containing a deliberate and specific criminal charge, which the deponent knows to be unfounded, and which also appears to be malicious, is within the provisions of perjury, notwithstanding the provisions (above-quoted) for false and malicious charges. Const. No. 233.

These provisions do not supersede an indictment for perjury.

SECTION IV.

OF INFORMERS.

278. The duty of goindahs is to discover the haunts of dacoits; to watch their movements; to mix with them occasionally with a view of acquiring accurate intelligence of their operations and designs; to communicate to their employer the result of such enquiries; and finally to point out to the police officers the persons whom the magistrate may order to be apprehended. Magistrates are to be careful in observing the strictest adherence to the provisions of Reg. IX. 1807; and are not to issue process against any one, on a criminal charge or information from a person known to be a goindah, without satisfactory evidence of the truth of the accusation. Magistrates are not to intrust the execution of any criminal process to a goindah, nor to allow any authority whatever to be exercised, directly or indirectly, by any person of this description; and the utmost vigilance is to be observed to prevent every

Goindahs how to be employed.

Their informations not to be received without evidence.

Not to be intrusted with the execution of process.

How to be paid, and payments how to be charged.

possible abuse in cases in which a goindah is in any way concerned. Goindahs should receive a small monthly allowance for their immediate subsistence; and should be rewarded for any particular duty according to their activity and fidelity; the fixed allowances should be charged in contingent bills; but rewards will come within the provisions of section 18, Reg. XVI. 1810. C. O. Nos. 93 and 78 of vol. 1.

Police officers not to employ.

And to apprehend persons professing to be employed by magistrate.

279. The darogahs are prohibited from encouraging or employing, without the knowledge or express sanction of the magistrate, any goindahs who earn a livelihood by the profession of an informer; and they are to apprehend, and to send to the magistrate, any persons giving out that they are employed as goindahs by the magistrate or by the superintendent of police, unless they can show a written authority from such officer. This is not to be construed to preclude police officers from employing persons to trace offenders, who have eluded the pursuit of justice; or from encouraging persons to furnish information, by which robbers or other known criminals may be discovered and apprehended. On the contrary, the darogahs are to encourage such persons to communicate all the information possessed by them; and are to report to the magistrate any instance of meritorious service on the part of any such individuals, by which offenders are brought to justice, whether such individuals have exposed themselves to personal risk and trouble, or have merely supplied intelligence. Reg. XX. 1817. sect. 11, cl. 7.

But they are to encourage persons in giving information.

And are to report for rewards.

SECTION V.

OF CONDITIONAL PARDON.

Magistrate empowered to tender a pardon to accomplices in certain crimes on condition of disclosure of circumstances, persons, &c.

280. In cases of murder, gang-robbery, highway-robbery, murder by thugs, coining, and forgery, as well as in cases of burglary and theft attended with circumstances of aggravation, magistrates are empowered, without previous reference to any other authority, to tender a pardon to one or more persons (not being principals), supposed to have been directly or indirectly concerned in or privy to the offence, on condition of their making a full, true, and fair disclosure of the whole of the circumstances within their knowledge relative to the crime committed, and the persons concerned in the perpetration thereof, or of their pointing out (in cases of robbery, burglary, and theft) the mode in which the stolen property may have been disposed of. Reg. X. 1824. sect. 3, cl. 1. (a)

Such persons to be examined without oath.

281. Persons to whom pardons are tendered under the above provisions are to be examined without oath. Reg. X. 1824. sect. 3, cl. 2.

Magistrates' reasons to be recorded.

282. In such case the magistrate is to record on his proceedings, either in English or the vernacular, the considerations which have induced him to deem such a course of procedure advisable. Reg. X. 1824. sect. 3, cl. 3.

(a) Construction No. 152, dated April 7, 1811, requires evidence to the privity, or criminality, of the person proposed to be pardoned to be first taken; but this was ruled in accordance with sect. 5. Reg. XIV. 1810, which is repealed by Reg. X. 1824; and as there is no provision to this effect in the latter regulation, the construction must be held to be superseded.

283. A magistrate may also tender a pardon to any accomplice or accessary, in a crime of the descriptions specified above, with a view to obtain his evidence in the trial of the other offenders. In such cases he should examine the individual in question in the first instance without putting him on his oath. Reg. X. 1824. sect. 3, cl. 4 and 5, as modified by Reg. I. 1829. sect. 7.

Pardon may also be tendered with a view to obtain King's evidence.

284. A magistrate is not authorized to tender a pardon to persons concerned in any other crimes than those specified above :—so held in regard to a case of affray, and a case of torturing and false imprisonment. Const. Nos. 535 and 1026.

Provisions confined to crimes specified.

285. A pardon may be tendered to more than one individual of the number concerned : —and 24 hours is considered a proper interval to be granted to persons to whom pardon has been offered, before they are called upon to signify their determination to accept it or not. Const. No. 405.

Pardon may be tendered to more than one

Interval to be allowed for consideration.

286. A person concerned in an offence of the nature specified above, giving information to a magistrate through a police officer, which may lead to any of the objects for which a magistrate is authorized to offer a pardon by the above provisions, is entitled to such pardon. Const. No. 89. (a)

Persons giving information through police, entitled to pardon.

287. Magistrates are to be cautious not to tender pardons to principal offenders ; and in no case to make the offer to accomplices or accessaries without a reasonable prospect of recovering the property plundered through their means,—or of thereby securing the apprehension and conviction of the principal offenders, or of the receivers of the stolen property. In cases, in which there appears no prospect of obtaining other evidence than the deposition of an accomplice or accessary, a pardon is not to be granted. Reg. X. 1824. sect. 4, cl. 1 and 2, as modified by sect. 7. Reg. I. 1829.

Cautions to be observed in tendering pardon.

288. A magistrate cannot offer a pardon to a person charged with participating in a crime committed in a district in which he has no jurisdiction. Const. No. 1232.

Jurisdiction.

289. The superintendent of police is to bring to the notice of the Nizamut Adawlut all instances which may come to his knowledge of the injudicious or improper exercise of the powers vested in the magistrates by this regulation. Reg. X. 1824. sect. 4, cl. 3.

Injudicious or improper exercise of power.

290. A magistrate, after committing a prisoner for trial, cannot legally quash his commitment, release one or more of the prisoners, and make him or them evidence for the prosecution in the same trial. Const. No. 857.

Magistrate cannot offer pardon after commitment.

291. It is competent to the session judge, or to the Nizamut Adawlut, at the time of trial, to instruct the magistrate to tender a pardon to any accomplice or accessary, with a view of obtaining his evidence on oath as a witness on the trial. Reg. X. 1824. sect. 5, cl. 2.

Session judge or Nizamut may direct the offer of pardon.

292. But a session judge is not competent to admit a prisoner to give evidence against his fellows, after he has been put upon his trial before the session court. In a case in which this had been done, the court annulled the proceedings as regarded that prisoner, and directed him to be tried on the charge on which he had been committed. N. A. R. vol. 4, page 32.

But not, after the prisoner has been put on his trial before the sessions.

(a) This construction was ruled in reference to sect. 9, Reg. I. 1811, which has been repealed by Reg. X. 1824; but it appears equally applicable to the latter.

But the Nizamut directed the offer to be made to a prisoner after conviction.

293. In a case of murder, however, in which one of the prisoners was convicted by the session judge of concealing the murder, the court directed that a free pardon should be offered to him on condition of disclosing the circumstances of the case within his knowledge; and on the completion of the trial the pardon was confirmed. N. A. R. vol. 4, page 255.

If the court directs the offer, magistrate is not to commit.

294. A magistrate is not competent to commit to the sessions, without reference to the court, a prisoner to whom a pardon has been tendered by order of the Nizamut Adawlut. N. A. R. vol. 2, page 289.

The sessions judge or Nizamut may order the committal of a person not conforming to the conditions.

295. It is competent to the session judge at the time of holding the session, or to the Nizamut Adawlut, if the final sentence is passed by the latter court, to direct the commitment of any person to whom a pardon has been offered under the above provisions, if it appears in evidence that such person has not conformed to the condition under which the pardon was tendered, either by wilfully concealing anything essential, or by giving false evidence or information with a view to the conviction of an innocent person. Reg. X. 1824. sect. 5, cl. 1.

But the magistrate cannot recall a pardon.

296. But the magistrate is not empowered to recall, of his own authority, a tender of pardon duly made and accepted. The proper course is to report the prisoner's non-fulfilment of the conditions to the session judge, and to be guided by his instructions. N. A. R. vol. 5, page 76.

Nizamut may revise proceedings and annul orders.

297. It is competent to the Nizamut Adawlut to revise the proceedings of the magistrate in any case in which a pardon is tendered to an accomplice or accessary, and to annul the orders passed on such proceedings, if it appears that a pardon has been granted on insufficient grounds. Reg. X. 1824. sect. 5, cl. 3.

In such case his evidence not to be used against the prisoner.

298. The statement made by the prisoner on oath before a magistrate on conditional offer of pardon cannot be received as evidence against him, if committed for trial for the original offence, on the ground of his having failed to fulfil the conditions under which the pardon was tendered to him. Const. No. 1041.

Example.

299. An approver having been committed by order of the session judge on the original charge, on the ground of his having failed to fulfil the conditions of the pardon tendered to him, and convicted, the court directed his discharge without punishment, not seeing reason to suppose that he had suppressed any facts within his knowledge. N. A. R. vol. 3, page 84.

Such powers not vested in assistants.

300. The powers granted by the above provisions to magistrates and joint-magistrates are not extended to the assistants to the magistrates. Reg. X. 1824. sect. 6.

Evidence, how to be taken.

301. A prisoner admitted as evidence, should be examined de novo, and not merely sworn to the truth of the statement made by him as defendant. Const. No. 1137.

302. The depositions of prisoners, admitted as evidence, should be taken in the first instance before the magistrate in the presence of those whom they may affect. Const. No. 405.

A qualified pardon may be offered to thugs.

303. A qualified pardon, extending only to exemption from capital punishment and transportation and to indulgence in confinement, may be offered to any thug from whom there is reason to expect that useful information may be procured, on condition of his making a full and ingenuous confession. This pardon may be offered either to persons convicted, or

to those not yet tried ; but in the latter case the proposed approver must invariably be committed for trial on the charge of having been guilty of the offence made punishable by Act XXX. 1836 ; and it is to be explained to him, that, if he pleads guilty to that minor offence, he will not be put on his trial for any capital crime which he may have committed as a thug. Before committal a faithful narrative of his life of crime, entering into as full a detail as possible, is to be placed on record, it being explained to him at the time that for any wilful omission on his part he will forfeit the qualified pardon. A few thug approvers also should be examined as to his being a real thug. C. O. No. 247 of vol. 2.

And dacoits.

304. A similar offer may be made to any dacoit on the condition, 1st, of making a full confession of all dacoities in which he has been engaged; 2nd, of mentioning truly the names of all his associates in crime, and assisting to the utmost in his power in their arrest and conviction. Such exemption is to be forfeited, if he acts contrary to these conditions; conceals any of the circumstances of the dacoities in which he has been engaged; screens any of his friends or relations ; attempts to escape ; or accuses any innocent persons. C. O. No. 30 of vol. 3.

Security-prisoners not to be removed, without their consent, in order to become approvers.

305. Persons confined in a criminal jail on a requisition of security for good conduct, cannot be removed to another district for the purpose of being induced to give evidence as approvers before the authorities appointed for the suppression of dacoity. But if such prisoners consent to be so removed for the sake of giving evidence, the Nizamut Adawlut may sanction their removal. Const. No. 1240.

SECTION VI.

OF WITNESSES.

Summons to be issued for the attendance of witnesses, whose evidence is required.

306. In any criminal trials, or matters cognizable by their respective courts, the magistrates, the sessions courts, or the court of Nizamut Adawlut, are to issue a summons to the witnesses whose attendance and evidence is required, specifying at whose request the summons is issued, and requiring them to appear in the court on a day to be named in the summons, and there to depose concerning the matter in question.* But all summonses to witnesses in criminal cases are to be served by a chuprassy, peon, or other officer of the magistrate, or by a police officer, instead of being delivered to parties to be served on their own witnesses. *Beng.* and *Ben.* Reg. L. 1803. sect. 2, cl. 1. *Ced. Prov.* Reg. VIII. 1803. sect. 25, cl. 1.

* *This is the rule prescribed to the civil courts by sect. 6, Reg. IV. 1793, and made applicable to these courts by this Regulation.*

Non-attendance and recusance.

Power of courts to compel such witnesses to attend and to give evidence.

307. By section 6, Reg. IV. 1793, if a witness so summoned by the civil court does not attend on the day appointed, or attending, refuses to give evidence, or to subscribe his deposition, the judge, in the first case, if it be proved to his satisfaction on oath that the witness is material to the cause, is to issue an order to the nazir to seize and bring the witness before the court, and is to impose on such witness not having attended, or refusing to give evidence, a fine not exceeding five hundred rupees, and to commit him to close custody until he consents to give his evidence and sign his deposition. The power of committing to close custody, and fining in a sum not exceeding five hundred rupees, any witness duly summoned, and after receiving the summons, not attending as thereby required, or although attending,

Course to be pursued with recusant witnesses.

refusing to give evidence and sign his deposition, is equally vested in the magistrates, and in the courts of sessions and Nizamut Adawlut. But witnesses attending and refusing to give evidence are, in the first instance, to be committed to custody only; and are to be called upon a second time, after such interval as may by the court be judged sufficient (not being less than one entire day); when, if the witness persists in his refusal to give evidence, he is to be fined in proportion to his situation in life (not exceeding the amount limited), and confined in the jail of the civil court until the fine be discharged, or for such period of imprisonment as may be fixed in lieu of fine under sect. 3, Reg. XIV. 1797; or, if the cause or trial is still depending, until he consents to give his evidence therein; after which, in such case, he is to be released, and the fine remitted. *Beng.* and *Ben.* Reg. L. 1803. sect. 2, cl. 2. *Ced. Prov.* Reg. VIII. 1803. sect. 25, cl. 2.

In what cases proof is required that the witness is material to the cause.

308. Proof on oath (not the prosecutor's oath exclusively) that the evidence of the witness is material to the cause, is required only in the case of a witness duly summoned, but not attending. In the case of a witness attending but refusing to give evidence, or refusing to sign his deposition, no new proof is to be called for that his evidence is material. Const. No. 159.

Magistrate may compel attendance of *any* witness.

309. A magistrate may proceed as above against any witness, whose evidence he requires, although such witness has not been named on oath by the prosecutor or other person as acquainted with the circumstances of the case. Const. No. 78.

Proclamation to be made before fine.

310. When a witness duly summoned has failed in attendance, and has subsequently evaded the warrant then issued for the seizure of his person, a proclamation should be issued requiring his attendance within a certain period, and if he does not attend within that period, the judge or other officer, should impose a fine not exceeding five hundred rupees, and proceed to levy the fine by attachment and sale of his property. But unless the summons has been actually and personally served on such witness, he cannot be proceeded against either by fine, or by the issue of a warrant for his seizure, or by the attachment of his property. Const. Nos. 172, 465, 487, and 698.

The summons must have been personally served.

Period of imprisonment in lieu of fine unlimited.

311. No limitation is fixed for the confinement which the court may award in commutation of fines adjudged in such cases. The court must exercise its discretion according to the circumstances of each case. A witness fined for refusing to swear is to be discharged on paying the fine, if the suit in which his evidence was required has been decided; or kept in confinement, whether he has paid the fine or not, if the suit be still pending, until he consent to give his evidence on oath as required. Const. No. 110.

All such fines to be reported to session judge.

312. All fines imposed by the magistrate under the above rules, whether for the non-attendance of witnesses duly summoned, or for refusal to give evidence, are to be reported to the session judge; who, in the event of any representation being made to him relative to such fine, is to examine the magistrate's proceedings, and report to the Nizamut Adawlut, if the fine appears immoderate, or to have been imposed on insufficient grounds. *Beng.* and *Ben.* Reg. L. 1803. sect. 2, cl. 4. *Ced. Prov.* Reg. VIII. 1803. sect. 25, cl. 4.

Witnesses are not to be ill treated.

313. Magistrates are carefully to prevent any abuses on the part of the subordinate native officers, such as confining witnesses in the *hajut* guard; and to punish such when brought to their notice. C. O. No. 59 of vol. 3. para. 3.

314. A session judge was instructed that parties should not be placed in confinement when they will not tell all they know, in order to bring the facts of a case to light. N. A. R. vol. 6, page 18.

Nor confined when they will not tell all they know.

315. Although no specific regulation exists on the subject, the courts possess authority to require muhajuns to produce their books in evidence, when an inspection of them may be necessary for a full understanding of the merits of a case pending before them. When therefore the court has just reason to be satisfied that a witness possesses documents material to the elucidation of the merits of a case, if such witness refuse or neglect to produce them, and fail to assign satisfactory cause, the court is warranted in proceeding against him as a recusant witness in conformity with the spirit of the above rules. Const. Nos. 270 and 757.

Rule to compel the production of account books and other documents.

316. If the attendance of any witness on the part of the prosecutor or the prisoner, whose evidence the law does not allow to be taken by commission, cannot be procured, or if any witness cannot be found, the session judge may postpone the trial, provided there appears sufficient cause for so doing. For the same reason the trial may be postponed a second time. But if the judge and his law officer are of opinion that the evidence of any witness, who is absent, is not necessary, the trial is to be completed without the evidence of such witness. *Beng.* Reg. IX. 1793. sect. 49. *Ced. Prov.* Reg. VII. 1803. sect. 17.

In the absence of a witness judge may twice postpone the trial.

317. After the trial has been twice postponed, the prisoners should be acquitted, if the magistrate is unable to lay before the judge evidence sufficient for their conviction. Const. No. 200.

And should then acquit.

318. But it is not necessary that any trial before the session court should be postponed for the evidence of a witness confined under the above rules (for refusing to give evidence); unless the judge thinks it proper to postpone it on this account under the discretion vested in him by sect. 49. Reg. IX. 1793; nor is it necessary to postpone the decision of any case, civil or criminal, for the evidence of a witness so confined, beyond such period as appears proper to the court. *Beng.* and *Ben.* Reg. L. 1803. sect. 2, cl. 3. *Ced. Prov.* Reg. VIII. 1803. sect. 25, cl. 3.

But trial *need* not be postponed if witness is confined for refusing to give evidence.

In commitments.

319. In cases committed to the sessions, magistrates are to be careful in taking recognizances from witnesses required to give evidence for the prosecution, that such is not taken from persons who appear to have no knowledge of the case, and whose evidence therefore cannot be requisite on trial. C. O. No. 304 of vol. 1.

Witnesses on the part of the prosecution.

320. When a prisoner is committed, or held to bail, for trial before the sessions, the magistrate is to question him, immediately after passing the order of commitment, whether he wishes to have any witnesses examined in his defence before the sessions court; and in the event of his answering in the affirmative, is to cause a list of the witnesses named by the prisoner, specifying their designations and places of abode, to be taken down and recorded upon his proceedings; or, in the event of the prisoner's replying in the negative, is to cause his reply to that effect to be recorded on his proceedings for the information of the sessions court. *Beng.* Reg. IX. 1796. sect. 2. *Ben.* ditto, sect. 5. *Ced. Prov.* Reg. VI. 1803. sect. 32.

Prisoner committed for trial is to specify any witnesses whom he desires to have examined in his defence.

321. The magistrate is to issue the customary process to cause such witnesses to attend at the time fixed for the trial of the persons in whose behalf they are summoned. *Beng.* Reg. IX. 1793. sect. 12. *Ced. Prov.* Reg. VI. 1803. sect. 12.

Such persons to be summoned.

And any others whom he may name at any time before the sessions.

322. Also, in the event of any such person, at any time before the sessions, desiring the examination of any witnesses upon his trial, although the same may not have been named by him at the time of his being committed, or held to bail, the magistrate is to be careful to cause the attendance of such witnesses, as well as those before named, at the time fixed for the trial. *Beng.* Reg. IX. 1796. sect. 3. *Ben.* ditto, sect. 5. *Ced. Prov.* Reg. VI. 1803. sect. 33.

Lists of witnesses summoned to be sent with the calendar to the sessions.

323. By section 14, Reg. IX. 1793, (*Ced. Prov.* sect. 14, Reg. VI. 1803,) the magistrate is required to submit to the sessions, with the proceedings on each trial, lists of the witnesses summoned at the requisition of the prosecutor or prisoner, specifying those in attendance, and those absent with the cause of their non-attendance. These lists are to be accompanied with the original returns made to the magistrate by the nazir, and person deputed on his part to serve the summons on any absent witness ; and the nazir, and person so deputed, are to be kept in attendance on the sessions court to answer any interrogatories which the judge may put to them. And the judge is expected to make such enquiry as to satisfy himself, as well as the Nizamut Adawlut in referrible cases, that all due measures have been taken to cause the attendance of the whole of the witnesses both on the part of the prosecutor and of the prisoner. *Beng.* Reg. IX. 1796. sect. 4. *Ben.* ditto, sect. 5. *Ced. Prov.* Reg. VI. 1803. sect. 14.

And judge is to see that due measures have been taken to cause the attendance of all.

And to issue orders calculated to secure their appearance.

324. In the event of the absence of witnesses for the defence, it is the duty of the session judge to issue such orders as may appear calculated to secure their appearance, if the prisoners are still desirous of having their evidence. In a case in which this was not done, and the case was closed without further enquiry, the proceedings were returned that the omission might be supplied. N. A. R. vol. 5, page 94.

If witnesses are Mahomedan or Hindoo ladies of rank.

325. On a trial before the sessions, if the prosecutors or witnesses are Mahomedan or Hindoo women of a rank and situation in life, which, according to the customs and prejudices of the country, would render it improper to compel them to appear in a court of justice, and if their evidence is deemed necessary, and the case is of such a nature as to admit of its being taken by commission, the judge is not to require the attendance of such women, but is to depute persons to take their evidence. *Beng.* Reg. IX. 1793. sect. 48. *Ced. Prov.* Reg. VII. 1803. sect. 16.

Examination of absent witnesses.

As a general rule such is not available on a criminal trial;

Except in the case of death or unavoidable absence.

326. It is held as a general rule, that the examination of absent witnesses cannot be received in a criminal trial, and that their personal attendance is necessary. Const. No. 1280.

327. And the evidence of witnesses for the prosecution in a criminal trial cannot be taken except in the presence of the accused. Const. No. 658. N. A. R. vol. 1, page 300.

328. But the evidence of any person on oath before the magistrate, duly attested and proved, would be available as evidence on the trial in case of the death or unavoidable absence of such person. C. O. No. 42 of vol. 3.

Commission to be issued to officer of court, or other person, within jurisdiction, or to a subordinate court.

329. It is lawful for any court and the several judges thereof, in every civil proceeding depending in such court, upon the application of any of the parties to such proceeding, to order the examination, upon interrogatories or otherwise, before any officer of any such court, or other person or persons named in such order, of any witnesses within the jurisdiction of the

court where the proceeding is depending,—or to order a commission to issue to any subordinate court for the examination of such witnesses upon interrogatories or otherwise,—or to order a commission to issue to any other court for such examination of witnesses at any place out of such jurisdiction,—and to give such directions for taking such examinations as appear reasonable and just. Any court to whom such commission is directed, is to take the examination in open court in all cases, where witnesses are able to attend in court, and are not exempted from attendance by law, absolutely, or at the discretion of the court. Under special circumstances such commissions for taking evidence out of jurisdiction, may be directed otherwise than to a court. Act VII. 1841. sect. 2.

Or to any court beyond jurisdiction.

Or to any person beyond jurisdiction.

330. When an order is made for the examination of witnesses within the jurisdiction of the court, such court or any judge thereof may command the attendance of any person to be named in the order, and may direct the attendance of any such person to be at his own place of residence or elsewhere, if necessary or convenient, and to produce all necessary documents and papers. Wilful disobedience to any such order is to be deemed a contempt of court, and is punishable as in other cases of refusing or neglecting to give testimony. Every person whose attendance is required under this Act is entitled to the like payment for expenses and loss of time as upon attendance in court in cases where such expenses are allowed. Act VII. 1841. sect. 3.

If within jurisdiction, the attendance of any witness may be required at the court, or at his own residence or elsewhere.

Disobedience on the part of the witness summoned.

Re-imbursement of expenses of witness.

331. All such examinations are to be taken on oath, or affirmation, where an affirmation is admissible or required. And any person wilfully and corruptly giving any false evidence, or procuring such to be given, is to be deemed guilty of perjury, or subornation thereof. Act. VII. 1841. sect. 4.

Examinations to be taken on oath.

False evidence therein perjury.

332. Before issuing any order or commission under this Act, the court or judge is to be satisfied that there is good reason for believing that the witness will be unable to attend at the usual time for examination by reason of absence from the jurisdiction, sickness, or other cause allowed by law; and is to make particular enquiry as to the residence of the witness, and as to the court (of the same or of inferior degree) which is nearest to such place of residence; and the commission is ordinarily to be directed to such court of equal or inferior degree as may most conveniently execute the same. But, if there is doubt as to the most convenient court, the commission may be directed to the judge having jurisdiction in the district, within which it is to be executed; and such judge may at his discretion execute the commission in his own court, or direct it to any subordinate court in his district, which is to have the same effect as if it had in the first instance been so directed. No deposition taken under this Act, except as hereinafter mentioned, is to be read in evidence without the consent of the party against whom it is offered, unless it is proved that the deponent is beyond the jurisdiction of the court,—or dead,—or unable from sickness or infirmity to attend to be personally examined,—or distant without collusion more than fifty coss,—or exempted by law absolutely or at the discretion of the court from personal appearance,—or unless the court at its discretion dispenses with the proof of any of the above circumstances,—or authorizes the deposition of any witness being read in evidence, notwithstanding proof that the causes for taking such deposition have ceased at the time of reading it; and after the witness

Court to satisfy itself with the reason for the non-attendance of witness.

And to enquire for his place of residence, and the nearest court thereto.

The commission to be directed to such court; but if doubt, to judge of district;

who may direct it to subordinate court.

Deposition so taken not evidence unless deponent is beyond jurisdiction, or dead, or sick, or distant more than fifty coss, or exempted from personal appearance, or at discretion of court even though such cause has ceased.

If deposition is duly certified, proof of the signature of such certificate is not required.

has been produced and has delivered his testimony, the court may at its discretion authorize the reading of the deposition. All depositions taken under this Act, being duly certified, may be read at the discretion of the court without proof of the signature to such certificate. Act VII. 1841. sect. 5.

Such commissions may be executed within limits of Supreme Court; and are to be directed to court of requests.

333. Any court, other than one of Her Majesty's courts, or any judge thereof, may issue such commissions and orders to be executed within the local limits of the jurisdiction of Her Majesty's court; and all such commissions or orders, except when directed otherwise than to a court, are to be directed to a court of requests having jurisdiction within such limits or any part thereof. Act VII. 1841. sect. 6.

They may also be executed within foreign territories.

Punishment of disobedience or perjury on the part of persons in the service of the Company.

334. Such commissions and orders may be issued for execution within the territories of princes and states in alliance with the Company; and all persons therein, being in the service of the Company are required to pay obedience thereto; and for disobedience thereof, on being found within the jurisdiction of the court or judge issuing such commission or order, are punishable in like manner as if such offence had been committed within such jurisdiction; and for giving false testimony under the same are punishable by any court of justice within the territories of the Company. Act VII. 1841. sect. 7.

Disobedience of orders of court executing commission.

335. When the evidence of an absent witness is required out of the jurisdiction of the court so requiring, and the commission is directed to any court, such court may punish the wilful disobedience of any such order as aforesaid, notwithstanding it has not itself made such order, with the same amount of punishment as in other cases of refusing or neglecting to give testimony. Act. VII. 1841. sect. 8.

When the evidence of a prisoner in another district is required.

336. When the evidence of a prisoner confined in another district is indispensable, the court requiring it is to request the magistrate of the district in which the prisoner is confined to send him to such court, informing the Nizamut of the step thus taken; and it is competent to a magistrate, on such emergent requisition, to forward the prisoner, reporting at the same time, for the information of the Nizamut, his compliance with the requisition, and eventually the prisoner's return to his jail. C. O. No. 58 of vol. 3.

Indigent prosecutors and witnesses.

Diet money to be paid daily.

337. The magistrates are to pay to all prosecutors and witnesses, who appear to be actually in need of such assistance, a daily allowance of two annas each, during their attendance on the sessions, and the same allowance for as many days as in their opinion may be sufficient for such prosecutors and witnesses to come from, and return to, their respective homes. *Beng.* Reg. IX. 1793. sect. 26. *Ced. Prov.* Reg. VI. 1803. sect 26.

But only to those really indigent.

338. This allowance is not to be given indiscriminately to all prosecutors and witnesses in attendance on the sessions; but is to be restricted to such persons, attending the sittings of the session judge, as are really indigent, especially when they have not been long detained from their usual occupations. C. O. No. 91 of vol. 1.

Magistrate to ascertain actual attendance.

339. The magistrates, in paying the prescribed allowance to indigent prosecutors and witnesses, are to be careful to ascertain the actual attendance of the parties on the court; and are to establish such checks, as appear most effectual, to guard against overcharge by the native officers. The bills for diet money are to be countersigned by the judge. C. O. No. 75 of vol. 1.

340. At the commencement of a trial before the sessions, the judge is to ascertain what witnesses mentioned in the calendar are in attendance, and to make a mark opposite the names of the absentees: and, on the termination of the trial, having demanded from the magistrate's nazir a statement of his account for the diet money, he is to have the persons stated to have received it brought before him, and to direct whatever may be due to them to be paid in his presence. C. O. No. 125 of vol. 2.

Check to be established by judge.

PETTY CASES.

341. No process is to be issued for the attendance of witnesses on any charge of adultery, fornication, calumny, abusive language, slight trespass, or inconsiderable assault, unless the person by whom such charge is preferred, deposits in the hands of the nazir a sufficient sum for the maintenance of the witnesses who may be summoned on his application (being persons residing at a greater distance than five coss from the magistrate's cutcherry) for their support during one month, at such rate as may be fixed by the magistrate in each case, not being however in any instance less than one anna, or more than three annas per day for each witness. Reg. III. 1812. sect. 2, cl. 1.

No process to be issued without deposit of one month's diet money.

342. This rule does not require the subsistence money of witnesses to be lodged, until the prosecutor is desirous of taking out process to procure their attendance ;—and the witnesses should not be summoned, until the magistrate is prepared to take up the case. Const. No. 221.

When diet money is to be lodged.

343. If the detention of the witnesses from their homes is less than one month, they are entitled to subsistence only during the period of their absence in attending at the magistrate's cutcherry, in proceeding thither, and in returning to their homes ; and the surplus of the deposit is to be returned to the prosecutor. Reg. III. 1812. sect. 2, cl. 2.

Diet money to be paid only for the period of absence from home.

344. On the other hand, if the detention is for more than a month, the prosecutor is to deposit, at the expiration of each month, such further sum as is necessary for the subsistence of the witnesses during the month next ensuing, until the case is disposed of, or the witnesses discharged. If the prosecutor fails to make the prescribed monthly deposit, the complaint is to be immediately dismissed. Reg. III. 1812. sect. 2, cl. 3.

Further deposit to be made at the expiration of the month, or the case to be dismissed.

345. The foregoing provisions do not apply to cases of *mayhem*, actual affrays, or tumultuary assemblies of the people, requiring the immediate interposition of the police for the maintenance of public tranquillity. In such cases, as well as in heinous offences, the subsistence of indigent prosecutors and witnesses is to be defrayed by government. If, however, a prosecutor in any instance, by an exaggerated and perverted representation of the case, procures process to be issued against any person for any such crime or misdemeanor, and it appears on inquiry that the case is nothing more than a trifling offence, such prosecutor is to be held accountable for whatever sum appears due for the subsistence of his witnesses on the principles stated above. Reg. III. 1812. sect. 2, cl. 4.

These rules are applicable only to petty offences ; in other cases government to pay.

If prosecutor evades payment by misrepresentation of the case.

346. It is the duty of the nazir to keep an accurate and particular account of all sums received and disbursed by him on account of the subsistence of witnesses under these rules, which is to be inspected monthly by the magistrate or his assistant. Reg. III. 1812. sect. 2, cl. 5.

Nazir to keep account of such sums.

Magistrate to conform strictly to the above rules.

Indigent witnesses to be supported in all cases whether before the sessions or otherwise.

347. Magistrates are to conform strictly to the foregoing rules; and are to be careful to ascertain that indigent witnesses are, on all occasions, supported either by the prosecutor or by the state, during the time of their detention from their homes whether the case is pending before the session judge or otherwise. All criminal charges are to be speedily disposed of, so that witnesses may be detained for as short a period as is practicable at the sudder station. C. O. No. 59 of vol. 3.

Detention of witnesses.

348. Magistrates are required to prevent the prolonged detention of witnesses, by taking care that no unnecessary delay occurs in their examination by the mohurrirs, or in the perusal of their depositions and cross-examination by the magistrate. To this end all magisterial officers are required to keep a diary, in prescribed form* which is to be prepared and filled up according to directions contained therein. C. O. No. 194 of vol. 3.

v. Appendix B. No. 13.

Police.

Subpœnas how to be served.

349. Subpœnas to prosecutors and witnesses are to be drawn out according to prescribed form*, and to be served by a single burkundaz. Darogahs are strictly prohibited from delivering summonses to parties or their agents, to be served on their own witnesses. Reg. XX. 1817. sect. 23, cl. 1.

** v. Appendix A. No. 15.*

Mochulkas to appear before magistrate.

350. Prosecutors and witnesses, whose attendance is necessary at the criminal courts, are to execute mochulkas† before the police officers to appear before the magistrate on a specific day, which is to be the day whereon the accused is bound to appear, if admitted to bail, or expected to arrive at the magistrate's place of residence, if forwarded under custody :—the police officer, in whose presence the mochulka is executed, is to forward it with his report to the magistrate; and is to deliver to the prosecutor or witness a despatch addressed to the magistrate and drawn out in prescribed form,‡ which such person is to deliver himself to the magistrate, unaccompanied by any officer of police. Reg. XX. 1817. sect. 23, cl. 2.

† v. Appendix A. Nos. 16 and 17.

‡ v. Appendix C. No. 12.

To be taken on plain paper.

351. Such mochulkas may be taken on plain paper. Const. No. 679. Reg. X. 1829. sched. B. art. 1.

Prosecutors not to be subjected to restraint.

352. Police officers are prohibited from subjecting prosecutors to any degree of restraint, except when their complaints appear on inquiry to be false and malicious.§ Reg. XX. 1817. sect. 23, cl. 3.

§ v. ¶ 271.

Witnesses not to be subjected to restraint.

353. Police officers are not to subject witnesses to any restraint or unnecessary inconvenience, nor to require them to give security for their appearance, but if a witness refuses to attend, or to execute the recognizance directed above, the police officer presiding at the thana may forward him under custody to the magistrate's court. Reg. XX. 1817. sect. 23, cl. 4.

Mal-treatment.

354. Any species of maltreatment inflicted on a witness by a police officer, landholder, or farmer, or by any other person whatever, with a view to procure information, subjects the offender to exemplary punishment on conviction before the magistrate or sessions court. Reg. XX. 1817. sect. 19, cl. 2.

Power to compel attendance.

355. Police officers do not possess authority to compel the appearance before them of persons acquainted with the commission of offences. Const. No. 189.

SECTION VII.

OF OATHS.

The Mahomedan and Hindoo religions do not prohibit the taking oaths.

356. The cazee-ool-cuzat and mooftees of the Nizamut Adawlut have declared that there is no prohibition against an oath to the truth being taken by Mussulmans in any case; although it is not required by the Mahomedan law to give validity to evidence in judicial cases. And from the report of the pundits of the Sudder Dewanny Adawlut, it appears, "that the Hindoo law not only authorizes, but requires, the oaths of witnesses in civil and criminal cases; and prescribes the form in which oaths may be administered to persons of various tribes, regard being had to the importance of the matter in dispute: that no person of whatever rank is prohibited from taking an oath in a court of justice; nor is there any objection grounded on law or usage against administering the oaths prescribed by law; that Brahmins, rigidly observant of the duties of the priesthood, are exempted by one ancient author (Gotum) from taking an oath, and may therefore be heard as witnesses upon their simple affirmation; but that the other authorities of the law, which do not contain this exemption, prevail over the single text of Gotum, and declare no dispensation in favor of any description of persons, and pronounce no form of oath sinful, excepting as far as the soodra cast is restricted from handling certain idols; and that the form of swearing by the water of the Ganges, and by copper and toolsy, is virtually sanctioned by many shasters; but that other prescribed forms are of equal validity; and that all oaths, made by laying the hand on any symbol or image of the deity, have the same obligation." *Beng.* and *Ben.* Reg. L. 1803, Preamble. *Ced. Prov.* Reg. VIII. 1803. sect. 25, cl. 1.

Form of affirmation to be made by Hindoos and Mahomedans.

357. Instead of any oath or declaration formerly authorized or required by law, every individual of the Hindoo or Mahomedan persuasion is to make affirmation to the following effect:—"I solemnly affirm in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth." Act V. 1840. sect. 1.

Mode of making.

Translations.

358. It is not required that the deponent should sign his name to any written affirmation; he should merely read it out in court, or it should be read out to him and repeated by him before giving his deposition; and at the head of his written deposition it should be stated that he was sworn according to the provisions of Act V. 1840. Translations of the affirmation are given in Bengallee and Urdu for Mahomedans and Hindoos;* if it is necessary to use the Bengallee form for Mahomedans, the term used to designate the Supreme Being, by persons of that persuasion, is to be substituted. C. O. *Lower Provinces*, No. 44, *Western Provinces*, No. 48 of vol. 3.

* *v. Appendix C. Nos. 5 and 6.*

Police officers to use the same form.

359. Police officers are in the same manner to make use of the same form in all cases, wherein they are authorised by the regulations to take a deposition on oath. C. O. No. 117 of vol. 3.

360. A police mohurrir has no power to administer oaths except in the absence of the darogah; and the latter has no authority to delegate his power of administering oaths when present. N. A. R. vol 1, page 386.

Such affirmation has the same force as an oath in regard to perjury.

361. If any person, making such affirmation, wilfully and falsely states any matter or thing, which if sworn to before the passing of this Act would have amounted to perjury,—he is to be subject in all courts to the same punishment, to which persons convicted of perjury were subject before the passing of this Act. Act V. 1840. sect. 2.

And subornation of perjury.

362. Any person causing or procuring another to commit such offence is to be subject in all courts to the same punishment, as persons convicted of subornation of perjury before the passing of this Act. Act V. 1840. sect. 3.

Oath must not be improperly required.

363. The punishment for perjury is not incurred by a false deposition on oath, if the deponent has been improperly required to take such oath. N. A. R. vol. 1, pages 138 and 349; vol. 2, page 180.

Nor administered by unauthorized persons.

364. So also the offence of perjury is not complete, if the oath is taken before a person not duly authorized to administer it. N. A. R. vol. 1, pages 326 and 386; vol. 2, pages 154 and 202; vol. 3, pages 171 and 212.

365. And so, a deposition taken on oath by the omlah is not complete until certified by the magistrate or other officer. N. A. R. vol. 5, page 70.

All persons to be examined on oath, if they understand the nature of oath. Persons without such understanding not to be examined at all on a criminal trial,—but may be used to furnish a clue to evidence.

366. The depositions of all persons examined, however young, are to be taken on oath, provided they appear to have a competent discretion, and to entertain a sufficient sense of the nature and obligation of an oath. But if a person, young in years, appear not to have such understanding, he is not to be examined at all in a criminal trial; and in all such cases, the alleged and apparent age of the person, and the queries and answers which have led to the conclusion that he is not of capacity to be sworn, are to be fully and exactly recorded upon the proceedings. This rule does not apply to preliminary inquiries before the police, or to investigations made by magistrates in cases beyond their competency. On such occasions the examinations of such persons are to be taken without oath, and used not as evidence in themselves, but as a clue to evidence. C. O. No. 62 of vol. 1, and No. 1 of vol. 2. N. A. R. vol. 1, page 271; vol. 2, page 85; and vol. 4, page 305.

Act does not extend to H. M.'s courts of justice.

367. This Act does not extend to any declaration or affirmation made in any of Her Majesty's courts of justice. Act V. 1840. sect. 4.

Commanding officer of military station may administer.

368. The commanding officer of any military station occupied by troops in the service of the Company, is competent to administer, within the limits of such station, any oath, which a justice of the peace is competent to administer within the said territories; and such oath is of the same effect as if taken before a justice of the peace. Act IX. 1836.

But not military court of inquiry.

369. A military court of inquiry has no power to administer an oath. N. A. R. vol. 3, page 171.

SECTION VIII.

OF EVIDENCE.

Rules for examination.
By whom.

370. Every witness or prisoner examined by a session judge is to be examined exclusively and entirely in the presence of that officer; and the same rule is applicable to all native judicial officers entrusted with criminal jurisdiction. C. O. No. 220 of vol. 2, para. 2.

Judge, and native judicial officers.

371. A pressure of public business may occasionally oblige magistrates, joint magistrates, and their assistants, to empower their native officers to record the depositions of parties in cases before them; but such proceedings are to be confined entirely to matters of minor importance. The examinations of prisoners are in all cases to be taken exclusively and entirely before the magistrate, or other officer, without any preliminary or partial examination before a native officer; and in all instances depositions are to be taken *in the presence* of the European officer presiding. C. O. No. 58 of vol. 1, and No. 220 of vol. 2, para. 4.

Magistrates.

Must be in the presence of the presiding officer.

Locality.

372. A deposition taken on oath in a private dwelling is illegal, and a charge of perjury cannot be sustained on such a deposition. Const. No. 627.

Language.

373. All examinations of parties and witnesses are to be taken down in the language and character, in which the person examined may desire to have it recorded. *Beng.* and *Ben.* Reg. IV. 1797. sect. 7, cl. 2. *Ced. Prov.* Reg. VII. 1803. sect. 18, cl. 1.

According to the wish of the deponent.

374. The rule originally prescribed in sect. 16. Reg. IX. 1793, that all examinations and depositions are to be written in the language in which the deponents are most conversant, is superseded by the above provision. Const. No. 204.

But must be in that in which delivered.

375. But officers are strictly prohibited from taken down the examination of parties or witnesses in any other language than that in which it is delivered. C. O. No. 220 of vol. 2, para. 7.

European witness.

376. The deposition of an European witness must be recorded in English, and a translation of it prepared by the court and annexed to it. Const. No. 1035.

Certification.

377. The person examined, whether party or witness, is to be allowed to read the examination when finished; or, if unable to read, it is to be read to him; after which, if he admit the record to be correct, he is to affix his name or mark to it; and the officer, before whom it is taken, is to certify the same under his official signature on the original record; as well as on a translation thereof, to be annexed to the original, if it has not been taken in the vernacular. *Beng.* and *Ben.* Reg. IV. 1797. sect. 7, cl. 2. *Ced. Prov.* Reg. VII. 1803. sect. 18, cl. 1.

Native judicial officers.

378. Native judicial officers entrusted with criminal jurisdiction are to certify, at the end of each deposition or examination, in the Persian language, in the mode indicated in the note, (a) that the same has been taken in their presence. C. O. No. 220 of vol. 2, para. 5.

(a) منـــكه صدر امين اعلى (يا صدر امين يا مولوي يا پنڈت) عدالت ضلع فلان ام
امروز روبروي من زبان بندي فلان گواه (يا اظهار مدعي يا مدعى عليه) گرفته شد
تحريرا فى التاريخ فلان سنه فلان العـــــبـــــد

Magistrate.

379. The same rule is applicable to magistrates and other European officers; but in cases of a heinous nature, and in all cases in which a commitment may be made, the deposition or examination is to be certified in the English language, and in the following manner: for a witness or prisoner—"Taken before me (or taken before A. B. serishtadar, and duly explained in my presence) this 27th day of January 1837.—C. D. Magistrate." C. O. No. 220 of vol. 2, para. 6; and No. 11 of vol. 1.

EXAMINATION.

Leading questions to be avoided.

Cross-examination.

380. In the examination of witnesses, leading questions, suggesting an answer, or having tendency to such suggestion, are to be avoided, and the interrogatories to them are to be proposed in such general terms as may bring forth all the information they possess, and lead to a discovery of the truth. With this view the parties are to be allowed to cross-examine the witnesses, and the presiding officer should also cross-examine them, when necessary. *Beng.* and *Ben.* Reg. IV. 1797. sect. 7, cl. 3. *Ced. Prov.* Reg. VII. 1803. sect. 18, cl. 2.

Particulars regarding deponent to be noted.

381. All examinations of parties and witnesses, besides the name of the person examined, are to specify the name of his or her father, and if a married woman the name of her husband, also the religion, caste, profession, and age; and the village and pergunnah in which they reside. *Beng.* and *Ben.* Reg. IV. 1797. sect. 7, cl. 4. *Ced. Prov.* Reg. VII. 1803. sect. 18, cl. 3.

Rule regarding circumstantial evidence.

382. When any stolen property, or instruments of violence, stated to have been found upon the prisoners, or in their houses, are produced, the prosecutor and any witnesses brought to give evidence thereupon, are to be carefully examined relative to the identity of such property, or instruments recognized by them, and the circumstances of their being found. The principle of this rule is to be applied in all instances of circumstantial evidence to which it is applicable. *Beng.* and *Ben.* Reg. IV. 1797. sect. 7, cl. 5. *Ced. Prov.* Reg. VII. 1803. sect. 18, cl. 4.

Admonition to be given to witness.

383. The following admonition is to be repeated to witnesses in the language which they best understand, immediately after they are sworn:—"In delivering your evidence under the oath now administered, you are required to declare the truth, the whole truth, and nothing but the truth! You are carefully to distinguish what you personally know as an eye-witness, or otherwise, from what you have heard from others; and are solemnly bound to answer all questions put to you on the trial before the court without any regard to the prosecutor or prisoner, to the best of your information and belief." *Beng.* and *Ben.* Reg. IV. 1797. sect. 7, cl. 6. *Ced. Prov.* Reg. VII. 1803. sect. 18, cl. 5.

384. Judges are to record upon their proceedings that the foregoing admonition has been repeated to the witnesses as above directed. They are also to remind witnesses of the admonition, whenever in the course of their examination there may appear occasion for it. C. O. No. 16 of vol. 1.

If witness varies in his depositions before magistrate and judge.

Deposition before magistrate

385. Session judges are to be careful to notice on their proceedings any material difference between the depositions of the same witnesses before them and the magistrates; and are to question the witnesses thereupon and to record their answers; but the depositions taken before the magistrates are not to be read before the sessions court in the presence of

the persons who gave the same, until they have been re-examined before the sessions court. *Beng.* and *Ben.* Reg. IV. 1797. sect. 7, cl. 7. *Ced. Prov.* Reg. VII. 1803. sect. 18, cl. 6.

not to be read in session court, till witness has given evidence.

386. A judge has no authority to decline examining the witnesses of a defendant, of whatever nature their evidence may be, though he attaches no weight to their testimony. N. A. R. vol. 6, page 12.

Witnesses for defence must be examined.

387. The evidence of witnesses for the prosecution, even in proof of the prisoner's confession, in a criminal trial cannot be taken in the absence of the accused. Const. No. 658. N. A. R. vol. 1, page 300.

Evidence for prosecution must be taken in presence of accused.

Competency.

388. No person, by reason of any conviction for any offence whatever, is incompetent to be a witness in any stage of any cause, civil or criminal, before any court in the territories of the East India Company. Act XIX. 1837.

Former conviction.

389. If convicts are required to give evidence they should be examined on oath. N. A. R. vol. 5, page 37.

390. The fact of a witness being afflicted with leprosy does not bar the admission of his evidence. Const. No. 726.

Leprosy.

391. The testimony of a wife against her husband may be received in corroboration of other evidence; [N. A. R. vol. 1, page 144,] but the practice of summoning the wife, or other near relation, of a prisoner as a witness for the prosecution, excepting in case of urgent necessity, is highly objectionable. N. A. R. vol. 2, page 149; and vol. 6, page 27.

Wife against husband.

Near relation.

392. The evidence of near relatives of the prosecutor is admissible in criminal trials. N. A. R. vol. 3, page 309.

393. The wife of the prisoner being brought forward to substantiate his defence (grounded on the murdered person having been detected in the act of adultery with her,) her evidence was held to be inadmissible on account of the existing relationship between the parties. N. A. R. vol. 1, page 182.

Wife in favor of husband.

394. Under the provisions of the above Act, the conviction of a person of a criminal offence cannot be considered as a bar to his giving his evidence against or in favor of his supposed accomplices in the same crime[a]; but it rests of course with the judge to place such reliance on the evidence as it appears to deserve. Const. Nos. 1117 and 1173.

Witness previously convicted on the same charge.

395. So, it was considered no sufficient reason for rejecting evidence to the defence, that the witnesses named by the prisoner had been accused before the magistrate of participating in the offence charged, but released by that officer. N. A. R. vol. 2, page 413.

Or previously accused and acquitted.

396. If a prisoner objects to examine his own witnesses on the ground of their having been tampered with by the prosecutor, the session judge ought not to examine them. Const. No. 1203. N. A. R. vol. 5, page 115.

Prisoner objecting to his own witnesses.

397. The examination of a witness on oath cannot be used as evidence against himself. N. A. R. vol. 1, page 373.

Evidence on oath not to be used against deponent.

Value.

398. In a case of affray attended with murder, the witnesses for the prosecution named before the sessions court as the actual perpetrator of the murder a particular prisoner, of

Contradictory evidence.

(a) This decision of course reverses the precedent in N. A. R. vol. 2, page 25.

whom they had made no mention before the magistrate. Such variation was considered by the law officers, and the court, sufficient to nullify the whole of the evidence. But where the witness on trial varied from his evidence, as given in the thana report, only as to the extent of his personal knowledge, the variation was not considered material by the court. N. A. R. vol. 1, page 236; and vol. 2, page 17.(a)

The best evidence set aside, when witness has a personal interest.

399. A girl, having eloped from the house of her parents, returns some time after, and asserts that she is their daughter: the denial of her identity by the parents is not held conclusive, as they are obviously interested in disclaiming the relationship. N. A. R. vol 1, page 194.

Evidence of a single witness sufficient.

400. The evidence of a single witness, if believed, is sufficient for the conviction of a prisoner; but the trial must be referred for the orders of the court, under sect. 5, Reg. XVII. 1817, if the futwa acquits on the ground of one witness being insufficient under the Mohamedan law. Const. No. 634. C. O. No. 48 of vol. 2.

Evidence of an absent witness.

401. It is held as a general rule, that the examination of absent witnesses cannot be received in a criminal trial, and that their personal attendance is necessary. But it seems that evidence taken on oath before the magistrate, and duly attested and proved (as required in C. O. No. 54 of vol. 2*), is available on trial before the sessions in the event of the unavoidable absence of the witness. Const. No. 1280. C. O. No. 42 of vol. 3.

* *v.* ¶ 379, *and infra Section* 21, "*Of sessions.*"

Of a witness since dead.

402. In a case of murder, a principal witness having died before the trial came on before the session court, it was held that if the judge considers the evidence of sufficient importance to warrant his so doing, it is incumbent on him to transfer the deposition of the deceased person, taken before the magistrate, duly authenticated, to the record, affording to it such consideration as it may appear to claim, when weighing the testimony adduced. N. A. R. vol 4, page 335.

Dying declaration.

403. In a trial for murder, it was held that the dying deposition of the deceased, taken by the police officers, should have been brought on the record of the trial; and that evidence to its accuracy should be taken. N. A. R. vol. 5, page 9.

404. The dying declaration of a murdered person (taken down in writing by a *sezawul*) was considered alone insufficient for conviction. N. A. R. vol 4, page 31.

Evidence taken in another court.

405. A magistrate cannot try a case, transferred to the foujdaree from the salt department, on evidence taken before himself in his capacity of salt agent. Const. No. 817.

406. So also the evidence recorded in a moonsiff's court was held to be inadmissible, as proof of a fact, in a trial before the sessions; and the mere recital, in the roobacaree of commitment in a case of perjury, that the prisoner made oath, was not considered sufficient evidence; the court would not presume that he was sworn, because he ought to have been. N. A. R. vol. 2, page 64.

The court will not assume,

(a) The terror of a gang of robbers, not apprehended, may sometimes deter persons, who have seen them commit a robbery, from giving information against them. But if, when questioned by the local officer of police, immediately after the robbery, they deny having recognized any of the robbers, their subsequent testimony, in opposition to such denial, must be received with the utmost circumspection; the more especially as it is a frequent practice, when persons of notorious or suspected character have been apprehended, to adduce false witnesses for their conviction of some specific offence. N. A. R. vol. 1, page 3, note.

407. But the admission of the fact by the prisoner may be taken to supply such omission in the evidence. N. A. R. vol. 3, page 22.

unless prisoner admits.

408. So, when a prisoner admitted that the corpse found was that of the murdered person, the court did not deem the absence of proof as to its identity sufficient to bar a capital sentence. (N. A. R. vol. 2, page 104). Although in a case in which the prisoner confessed a murder, and pointed out human bones, which he alleged to be those of the person murdered, the court held that as the bones did not admit of identification, there was not a sufficient finding of the body to warrant a capital sentence. N. A. R. vol. 2, page 82.

Written Evidence.

Public writings, copies.

409. Copies of judicial or revenue papers are not to be received as evidence in any court of justice, or in any public office whatever, unless made on stampt paper, and authenticated by the seal and signature of the court, collector, or other public officer having charge thereof.—*(For rules for procuring copies of records, see chapter* 6 *of book* 1.) Reg. XXVI. 1814. sect. 16, cl. 4.

Private writings, copies.

410. When a deed has been once filed in court, it becomes a record, and a copy may be taken upon the stamp prescribed for copies of records. Const. No. 428.

What are inadmissible unless stamped.

411. No deed, instrument, or writing, executed in any place whatsoever on the continent of India, and relating to the payment or receipt of any sum of money, or to the sale, conveyance, assignment, or transfer of any property, real or personal, being within any province or place to which this regulation extends, or of any interest in such property, or relating to any agreement, contract, obligation, engagement, or settlement intended to have effect within any province or place as aforesaid, (such deed, instrument, or writing being of a description chargeable with stamp duty) shall be pleaded, given, or admitted in evidence, or otherwise received or filed in any court of judicature or other public office, within the provinces subject to the Presidency of Fort William, unless the paper, vellum, or other material, on which such deed, instrument, or writing may be written, shall be stamped with the stamp prescribed for such in Schedule A of this regulation, or bear a stamp of an amount exceeding that so prescribed, or be stamped as prescribed at the date of its execution. Reg. X. 1829. sect. 3.

Account books.

412. No regulation requiring that account books shall be written on stampt paper, they are admissible as evidence, though written on plain paper.(a) Const. No. 592.

Mahommedan law.

AMENDMENT OF

Course of procedure, if the evidence of a witness is declared inadmissible by the law officer on the ground of his not being a Mahomedan.

413. The religious persuasions of witnesses are not to be considered as a bar to the conviction and condemnation of a prisoner; but in cases, in which the evidence given on trial would be deemed incompetent by the Mahomedan law, solely on the ground of the persons giving such evidence not professing the Mahomedan religion, the law officer of the sessions court is to declare what would have been his futwa, supposing such witnesses had been Mahomedans. In such cases the court is not to pass sentence, but is to transmit the record of the trial with such futwa to the Nizamut Adawlut, which court, provided they approve of the proceedings held on the trial, is to pass such sentence as they would have

(a) It follows, therefore, that all documents not coming within the provisions of the above regulations, are admissible on unstamped paper.

passed, had the witnesses been of the Mahomedan persuasion. *Beng.* Reg. IX. 1793. sect. 56. *Ced. Prov.* Reg. VII. 1803. sect. 25.

Or on any other account.

414. If the evidence of a witness on a criminal trial, before the sessions, is declared by the law officer inadmissible, on the ground of the witness being a police officer, or an officer of government of any description; or on any other ground of exception in the Mahomedan rules of evidence, which appears to the judge unreasonable and insufficient; the examination of the witness is to be taken, and the law officer is to declare in his futwa the sentence to which the prisoner would have been liable, if the evidence of the witness had been admissible under the provisions of the Mahomedan law. In such cases however, if the conviction of the prisoner depends exclusively or principally upon the evidence of such witness, the judge is not to pass sentence, but is to refer the trial to the Nizamut Adawlut; which court, after taken a futwa from its law officers, is empowered to pass such sentence as is deemed just and proper, under the preceding section of this regulation, and the general regulations in force. Reg. XVII. 1817. sect. 5.

Example.

415. Thus, the conviction of a prisoner resting principally on the evidence of two females, whose testimony the law officer holds insufficient for conviction, the judge, differing, must refer the trial. Const. No. 1045.

If evidence amounts to suspicion only, or weak presumption of guilt.

416. No punishment whatever is to be inflicted upon suspicion only, (termed by the Mahomedan lawyers *wuhm, shuk,* or *shoobah zaeefah*) when the evidence against the prisoner is undeserving of credit; or the presumption of his guilt, arising from credible testimony, or circumstantial evidence, is weak; and does not amount to the degree of strong and violent presumption, held sufficient for conviction, and recognized as such in the Mahomedan law under the denominations of *ghalib-oo-zun, akbur-oo-raee,* and *shoobah-u-cuvvee,* or *shoodeed.* When the judge does not consider a prisoner convicted on such presumptive proof, or on the evidence of credible witnesses, or on his own confession, he is not to sentence the prisoner to any punishment, whatever may be the futwa. Reg. LIII. 1803. sect. 2, cl. 6.

Rules of evidence.

417. The evidence required by the Mahomedan law varies in relation to different offences, and depends upon the principle of justice within the provisions of which it falls. We have already briefly adverted (paragraph 42) to the rules of evidence under the heads of *tazeer* and *seasut,* but a general view of the subject appears desirable in this place, notwithstanding that the foregoing provisions supply the remedy in cases, where the defects of this law are found to obstruct the free administration of justice. What follows is taken from the 21st book of the Hedaya, entitled *Shahadat,* or evidence, in volume 2 of Hamilton's translation.

How far it is incumbent to give evidence.

418. In all cases of crimes punishable by *kisas* it is incumbent upon every person to give his testimony, on being required to do so by the party concerned; but a witness is at liberty to give or withhold any evidence, which may lead to the conviction of a Mussulman of any offence liable to *hudd* or a less severe punishment. This is held, because the prophet said to a person who had borne testimony, "verily it would have been better for you if you had concealed it;" and again, "whoever conceals the vices of his brother Mussulman shall have a veil drawn over his own crimes in the two worlds by God." But this does not mean that it is commendable in a witness to commit perjury; he must tell the truth, but

not the whole truth; a denial of a positive fact would be wrong, but equivocation is praiseworthy.

Number of witnesses required to constitute full legal proof.

419. In order to constitute full legal proof, the Mahomedan law requires the evidence—in a case of *zina*, of four men;—in a case punishable by *kisas* or *hudd*, of two men;—and in all other cases of two men, or of one man and two women.(a) These numbers are the least required; but it is expressly stated that the strength of a case does not lie in the number of witnesses adduced to bear testimony. The evidence of women is inadmissible in all cases inducing *hudd* or *kisas*, the operation of which is barred by a doubt of the truth of the charge, because the testimony of women involves in itself a degree of doubt; and it is considered merely as a substitute for evidence, being taken only when that of men cannot be had. There is an exception to this rule founded on a traditional saying of the prophet, "the evidence of women is valid with respect to such things as it is not fitting for man to behold."

Evidence of women.

Character of witnesses.

420. It is an essential point in the consideration of evidence that the good character of the witnesses should be undoubted. In most cases, however, the magistrate may rest contented with the apparent probity of a Mussulman, "because the probable character of all that profess the religion of Islam is an abstinence from every thing prohibited by that religion;" but, in cases inducing retaliation or fixed punishment, mere probability is not sufficient, and therefore a purgation of the witnesses must be made by a strict investigation into their character. Such purgation is also necessary, if the defendant impugns the probity of the witnesses for the prosecution; and it may be made openly or in secret by the magistrate.

What evidence is inadmissible,

and what witnesses incompetent.

421. Evidence on hearsay is inadmissible except in proof of such matters as admit the privacy of only a few persons: so also evidence which depends on recognition of the voice is imperfect and is not allowed, for which reason a blind man is not a competent witness: and a man must not swear to his own signature, unless he remembers the act of signing.(b) Slaves, convicted slanderers, atrocious criminals, free-thinkers, heretics, and infidels, and generally persons guilty of shameless acts, or of such as are prohibited by law, are not admitted to be sufficient witnesses for want of credit.(c) Testimony is also inadmissible in favor of a father or son, or of a grandfather or grandson, or of a husband or wife, or of a master or slave, in consideration of their relative interests;(d) so also the testimony of interested persons(e) and of one partner in favor of another in a matter relative to their joint

(a) So, where there are only three witnesses, one male and two females, and their evidence is contradictory, full legal proof is wanting. N. A. R. vol. 1, page 193. In another case, the evidence of a female, and a minor was held insufficient. N. A. R. vol. 4, page 261.

(b) Comparison of hand-writing is not admitted as legal evidence. N. A. R. vol. 1, page 113, and note. See also Hed. Trans. vol. 2, page 630.

(c) The evidence of accomplices is insufficient to prove any criminal charge, though admitted, when corroborated by other evidence, to establish violent presumption. N. A. R. vol. 1, page 304.

(d) N. A. R. vol 1, page 7.

(e) In cases of extortion the law officers have held that those, who contributed to the extortioner's demands, could not be admitted as witnesses, as they were, in point of fact, plaintiffs in the case: but the court over-ruled this doctrine. N. A. R. vol. 2, page 341; and vol. 4, page 286.

property cannot be received; but this rule does not apply to evidence in favor of a brother or an uncle, because such relations have no power over one another. If the accused person be a Mussulman, it is requisite that the witnesses against him be also of the same religion;[a] the testimony of *zimmees*, or infidel subjects, with respect to each other, is admissible, although they be of different religions; the evidence of a Mussulman also is valid against a *zimmee;* and the testimony of both may be taken against an infidel *moostamin*, or protected stranger. But the evidence of the latter is invalid against any person except one of his own countrymen, also a protected alien.

Evidence is rendered void by great delay on the part of the witnesses in producing it.

422. All evidence, with respect to such punishments as are purely a right of God, is vitiated and rendered void by such great delay in the production of it, as amounts to *takadim*, where the witnesses were not prevented from coming forward. The argument is that if the witness withheld his evidence for the sake of concealing the infirmity of another, it follows that any subsequent evidence could only arise from motives of malice, or of private interest, in which case his testimony is invalid; and if, on the other hand, the witness delays so long to perform the duty of giving evidence, which in all other cases is incumbent upon him, his evidence must then be held unworthy of attention. Hence, in either case, the witnesses are liable to suspicion on account of their falsity or unworthiness. The limitation of *takadim* is disputed, but it is generally held to be one month.[b]

The evidence must be valid at the time of passing the decree.

423. The validity of the evidence at the time of passing the decree constitutes the proof; and therefore if a witness loses his competency after having given evidence, and before the passing of the decree, by reason of blindness, or dumbness, or insanity, or from becoming infamous, the decree cannot issue; but in such cases death or absence does not destroy competency.

In case of contradictory evidence.

424. It seems that when the evidence of two witnesses do not entirely agree, only so much is to be believed as is confirmed by both; but the entire evidence must be rejected, if they differ on points in regard to which it is improbable that the memory should fail; or on points not superficially apparent, any knowledge of which therefore bespeaks a more minute attention.

Evidence given by proxy

425. A witness may give evidence by proxy, by substituting another person to detail certain facts or opinions for him, in case of his inability to give evidence in person. But this is admissible only in cases of necessity, arising from the death of the principal witness, or from his having departed to a distance of three days' journey, or from severe sickness; and is never admitted in cases in which the occurrence of a doubt bars judgment.

Retractation of evidence.

426. Rules also are given whereby a witness may retract his evidence before the decree is passed, and in such case the evidence becomes void.

Futwa delivered by law officers of Nizamut Adawlut on imperfect evidence.

427. To this summary of the rules of evidence, which is necessarily imperfect, may be added the translation of a futwa given by the law officers of the Nizamut Adawlut in 1799, in answer to a question regarding punishment in cases of *shoobah*, which I find quoted in Harington's Analysis, vol. 1, page 292. "There are three degrees of imperfect evidence. The first produces *shuk*, or uncertainty whether the charge be true or false. The second

(a) N. A. R. vol. 1, page 31. (b) Hed. Trans. vol. 2, page 35.

establishes *zun*, or presumption that the accusation is true. The third excites *wuhm*, or doubt against the truth and probability of the fact alleged. The degree of *zun* is admitted to be a ground of legal conviction and sentence, provided the mind receives a strong impression and assurance from it; in which case it is denominated *akbur-i-raee*, and *zun-i-ghalib*. This degree of violent presumption amounts nearly to certainty, and is fully described as such in the *Ashbaho Nuzayir*. The sum of the above is, that a penal sentence may be founded upon imperfect evidence, when, in the judgment of the magistrate, it affords strong ground of presumption that the crime charged has been committed by the party accused. In the *Buhr-i-rayik* it is related, from the jurist Aboo Bukr Aamash, that when a person accused of theft denies the charge, the magistrate may act to the best of his judgment upon the case. If he be impressed with a strong conviction that the prisoner has committed the theft, and has the stolen property in his possession, he may inflict discretionary punishment. In the *Moheet* it is declared that the shedding of blood upon violent presumption is authorized. And a similar declaration is contained in the *Buhr-i-rayik*, that it is held lawful to take away life upon strong presumptive proof. Thus if a man enter the house of another with a drawn sword, and the owner of the house entertain a firm belief that the other is come to kill him, he may put the stranger to death. Strong presumption is sometimes produced by the circumstances of the case, without the testimony of witnesses. It is accordingly noticed by the author of the *Buhr-i-rayik*, that in like manner as a charge is proved by witnesses, or by the confession of the accused, so it is also established by convincing circumstances. Thus if a man come out of a house with a bloody knife in his hand; and he appear terrified, and run away; and the people immediately entering the house find a person whose throat has been recently cut; the blood dropping from it; and there be no other man in the house; these circumstances warrant a strong presumption that the man described is the murderer. A mere possibility of the person in question having cut his own throat, or that another may have cut his throat and escaped over the wall, is too remote from probability to be relied upon. Strong presumption is likewise, at times, found in the testimony of witnesses, not amounting to legal proof; in which case *tazeer* may be inflicted, though *hudd* and *kisas* are prevented. Thus Kazee Khan says, "an imputed murderer, robber, or assailant, may be imprisoned, till he show contrition." Upon which the author of the *Buhr-i-rayik* observes, that the imputation *(ittihám)* should rest upon the evidence, either of two witnesses of unascertained credit, or of one credible witness. Upon such evidence therefore, though legally defective, if it produce a violent presumption that the accused is guilty of the crime alleged against him, *tazeer* by imprisonment may be adjudged. But, on the contrary, if only a single witness of uncertain credit, or a known reprobate, have given testimony, the magistrate is not authorized to imprison the accused upon evidence of so doubtful a nature."

English Law.

428. It is hoped that the following epitome of the English law of evidence will be found useful. It is taken from "Archbold's pleading and evidence in criminal cases" (fifth edition) and "Harrison on Evidence." These works are in themselves epitomies; but of course even they contain much which is inapplicable to our Indian code.

GENERAL RULES.

The best procurable evidence must be produced.

429. The best evidence the nature of the case will admit of must be produced, if it be possible to be had; but if not possible, then the next best evidence that can be had is allowed. The non-production of the best procurable evidence creates a presumption that, if produced,

it would have detected some falsehood which at present is concealed. Therefore, before secondary evidence is offered, a foundation for it must first be laid by proving that better evidence cannot be obtained. Thus, for instance, the best evidence of the contents of a deed is the deed itself; secondary evidence, a copy or parol evidence of the contents of the original; therefore, before the latter can be received, the absence of the first must be satisfactorily accounted for; and without such explanation, not even the admission of the party against whom it is to be used will justify its receipt. Records are an exception to this rule, as they may be proved by authenticated copies.

Records.

Hearsay not admissible.

Exceptions.

430. Hearsay is no evidence; and for two reasons: what the other person said was not upon oath; and the party, who is to be affected by it, had no opportunity of cross-examining him. To this rule, however, there are some exceptions, arising from necessity:—1. Hearsay is admissible to prove the death of a person beyond sea.—2. Hearsay is good evidence to prove a prescription or custom; and for this purpose old witnesses are usually called to prove what they heard in their youth from old persons upon the subject.—3. What a witness has been heard to say at another time may be given in evidence, in order to invalidate or confirm the testimony he gives in court.—4. When hearsay is introduced, not as a medium of proof to establish a distinct fact, but as being part of the transaction in question, it is admissible.—5. Upon an indictment for murder, the dying declarations of the deceased are receivable in evidence, if he would have been an admissible witness while living, and if it appear to the satisfaction of the judge that the deceased was conscious of his being in a dying state at the time he made them; and sensible of his awful situation; even although he did not actually express any apprehension of danger, and his death did not ensue until a considerable time after the declarations were made. But these declarations are admissible only where the death of the deceased is the subject of the charge, and the causes of the death the subject of the declaration. The dying declarations of an accomplice are holden admissible in evidence, provided he were at the time such a person as would be competent as a witness.

Dying declarations.

Nothing to be given in evidence, except in proof or disproof of charge.

Proof of guilty knowledge;

of malice;

431. Nothing is to be given in evidence which does not directly tend to the proof or disproof of the matter in issue; thus, it is not allowable upon the trial to show that the prisoner has a general disposition to commit the same kind of offence, as that for which he stands indicted. Where a guilty knowledge upon the part of the defendant is to be proved the prosecutor is allowed to give in evidence other instances of his having committed the same offence, for which he is now indicted. As, for instance, upon an indictment for disposing of and putting away a forged bank note, knowing it to be forged, the prosecutor may give evidence of other forged notes having been uttered by the prisoner at other times, before or after the commission of the offence for which he is indicted. And nearly the same rule applies, where it is requisite for the prosecutor to prove malice upon the part of the defendant. As, for instance, upon an indictment for murder, former attempts of the defendant to assassinate the deceased would not only be receivable in evidence, but would be very strong presumptive proof of malice prepense. So, for the same reason, former menaces of the defendant, or expressions of vindictive feeling towards the deceased, or in fact the existence of any motive likely to instigate him to the commission of the offence in question, are also in such a case receivable in evidence. Upon an indictment for rape the defendant may

give general evidence of the woman's character for want of chastity; or he may prove that she had before been criminally connected with him, but not that she had been criminally connected with others. The prisoner also is allowed to call witnesses to speak generally as to his character, but not to give evidence of particular actions, unless such evidence tend directly to the disproof of some of the facts charged. But evidence to the prisoner's character can be of avail only in doubtful cases, when the probabilities are nearly equal.

of the character of the woman in case of rape;

of general character of defendant.

432. A presumption is, where some facts being proved, another follows as a natural or very probable conclusion from them, so as readily to gain assent from the mere probability of its having occurred, without further proof. The fact thus assented to is said to be presumed, that is, taken for granted, until the contrary be proved by the opposite party; *stabitur præsumptioni donec probetur in contrarium.* And it is adopted the more readily in proportion to the difficulty of proving the fact by positive evidence, and to the obvious facility of disproving it, or of proving facts inconsistent with it, if it really never occurred. Presumptions are of three kinds: *violent*, when the facts and circumstances proved necessarily attend the fact presumed;—*probable*, where the facts and circumstances proved usually attend the fact presumed; and *light* or *rash*, which, however, have no weight or validity at all. If, upon an indictment for murder, it were proved that the deceased was murdered in a house out of which the defendant immediately afterward was seen running with a bloody sword in his hand; these facts raise a violent presumption that the defendant was the murderer; for the blood, the weapon, and the hasty flight, are all circumstances necessarily attending the fact presumed, namely, the murder. So upon an indictment for stealing in a dwelling house, if the defendant were apprehended a few yards from the outer door, with the stolen goods in his possession, it would be a violent presumption of his having stolen them; but if they were found in his lodgings some time after the larceny, and he refused to account for his possession of them, this, together with proof that they were actually stolen, would amount, not to a violent, but to a probable presumption merely; but if the property were not found recently after the loss, as, for instance, not until sixteen months after, it would be but a light or rash presumption, and entitled to no weight.

PRESUMPTIVE OR CIRCUMSTANTIAL EVIDENCE.

Presumptions from the evidence.

433. In addition to the presumptions which may be made from circumstantial evidence, there are also presumptions in law. Thus, in murder, the law presumes malice from the act of killing, until the contrary be proved by the defendant. And the law also infers that every man must contemplate the necessary consequence of his own act. Where a man has in possession a large quantity of counterfeit coin unaccounted for, it may be inferred that he procured it with intent to utter it, if there be no evidence that he was the maker. So, in every case, intention can be but matter of presumption, arising either from the facts stated in the indictment, or from extrinsic facts stated in evidence.

Presumptions in law.

434. It may also be necessary to observe, that the law presumes every man to be innocent, until the contrary be proved. It is also a maxim of law, that *omnia præsumuntur rite et solemniter esse acta donec probetur in contrarium.* Presumptive evidence should be admitted cautiously; and Sir Matthew Hale lays down the two following rules as necessary to be observed: first, Never to convict a man for stealing the goods of a person unknown, merely because he will give no account how he came by them, unless an actual felony be

Sir Matthew Hale's rules for the cautious admission of such evidence.

proved of such goods; and secondly, Never to convict any person of murder or manslaughter, till at least the body be found.

WRITTEN EVIDENCE.

435. In regard to written evidence, it is unnecessary to quote the rules given in the English books regarding the admission and proof of public writings, as the practice of our courts is regulated by orders specially enacted for their guidance, and quoted above. But it will be useful to see the mode of proof necessary for making written instruments of a private nature admissible as evidence in the English courts.

The deed itself must be produced.

436. When a deed is to be given in evidence, the general rule is that the deed itself must be produced at the trial. To this, however, there are of necessity some exceptions; as, where the deed is in the hands of the opposite party; or has been lost by time or accident, or by any other casualty, as fire, &c.; the contents of it may be proved by a copy, or other secondary evidence. It is the generally understood rule that a person cannot be convicted of forgery unless the forged instrument is produced; but in a case, where it appeared that the deed alleged to be forged was in the custody of the defendant, who refused to produce it, secondary evidence of the deed was received.

Proof of the execution of the deed by handwriting;

or by subscribing witness.

437. As to the proof of the execution of the deed;—if there have been no subscribing witness to it, then proof of the handwriting of the parties is sufficient, the law in such a case presuming a delivery. But if the deed were attested, the execution must be proved by at least one of the subscribing witnesses, for the acknowledgment of the party is in this case deemed secondary evidence. It does not appear necessary that the subscribing witness should swear that the deed was actually executed in his presence; if he were afterwards desired to attest it by the party who executed it, or in his presence, and he attested it accordingly, this is sufficient, provided that the attestation and execution be done so nearly at the same time, as fairly to be deemed parts of the same transaction. On the other hand, a person who even sees an instrument executed, but who is not desired by the parties to attest it, cannot, by afterwards putting his name to it, prove it as an attesting witness. To this rule of proving the execution by the evidence of an attesting witness, however, there are many exceptions. *First*, where the execution forms one of the admissions in the cause. *Secondly*, where the deed is thirty years old and upwards, the court will presume that it has been duly executed, and will not require it to be proved, provided possession have followed the deed, or that some satisfactory account be given of it, and provided there be no rasure or interlineation in it, and that it do not import fraud; otherwise it must be proved as in ordinary cases, either by the attesting witness, or by evidence of his and the party's handwriting. *Thirdly*, where a registered deed is given in evidence, it is not necessary to prove the execution of it by the subscribing witness. *Fourthly*, where one deed is recited in another, proof of the second deed is deemed proof of the one recited, as against the parties to the second deed, and those claiming under them. *Fifthly*, if the name of a fictitious person be put as the only subscribing witness, evidence of the handwriting of the party alone will be sufficient. So, if the subscribing witnesses be since dead, or be out of reach of the process of the court, or have become incompetent, or be interested in the event of the suit, the deed may be admitted by proving the handwriting of the witness and party. *Sixthly*, if the deed appear to be attested by one or more persons, but in point of fact these persons

Exceptions to rule.

never saw the deed executed or delivered, the attestation may be deemed a nullity, and the deed be proved by proving the hand-writing of the party. *Lastly*, where the subscribing witness at the trial is unable, or refuses, to disclose the truth, the deed may be proved by other witnesses.

In a case of forgery, what proof required from prosecutor.

438. Upon an indictment for forging a deed or other written instrument, all that is incumbent upon the prosecutor to prove is, that the name subscribed to the deed is not the hand-writing of the party whose signature it purports to be, which may be proved by the party whose name is forged.

Proof of handwriting.

439. The handwriting of a person may be proved either by some person who has a knowledge of it, from having seen him write,—even his surname;—or from having been in the habit of corresponding with him;—or acting upon his correspondence with others;—or it may be proved by his own acknowledgment or admission. But it cannot be proved by comparing it with other writings, though confessedly of his hand-writing.

PAROL EVIDENCE.

In what cases receivable.

440. Parol evidence is inferior to written evidence, and as the general rule is that the best possible evidence shall be given, it follows of course, that parol evidence can never be received where there is written evidence of the same fact. *Secondly*, it is a general rule that parol evidence shall not be received of any thing which is not immediately within the knowledge of the witness; he must speak of facts which happened in his presence, or within his hearing. To this, however, there is one exception, namely, that, in a matter of science, a person intimately acquainted with it may be called upon to give his opinion as to the probable result or consequence, from certain facts already proved. As, for instance, if it were required to determine whether a man died of any particular disease, symptoms being proved, a physician may be called upon to give in evidence his opinion as to the disease of which the party died, as founded upon the symptoms so proved, although he had never seen the deceased. So, upon an indictment for murder, the deceased's wounds, &c. being described, a surgeon may be called upon to give in evidence his opinion whether the deceased died in consequence of his wounds, or from natural causes. Upon a question of insanity, a witness of medical skill may be asked whether such and such appearances, proved by other witnesses, are, in his judgment, symptoms of insanity; but it is very doubtful whether he can be asked, if, from the testimony given, the act with which the prisoner is charged is, in his opinion, an act of insanity, which is the very point to be decided by the jury. *Thirdly*, we have seen that hearsay is no evidence, excepting in certain excepted cases before mentioned. But, in other cases, all facts which cannot be proved by records, or other written evidence, may be proved by parol evidence.

INCOMPETENCY OF WITNESSES.

441. Persons deemed incompetent as witnesses, and who therefore are not to be allowed to give evidence upon a criminal prosecution, may be classed as follows: those who do not appear to have sufficient discretion; those who do not appear to have a right sense of the sanctity and moral obligation of an oath; those whose crimes have rendered them infamous;[a] those who are interested in the event of the suit; those who stand in the relation

(a) It is needless to advert further to incompetency from infamy, which in English law proceeds only from a judicial conviction of some offence, since under Act XIX. 1837, no witness can be rejected for such reason. *See above* ¶ 388.

of husband or wife to the defendant; and, lastly, the counsel and solicitors of the defendant and prosecutor in some cases.

From want of discretion.

442. An idiot shall not be allowed to give evidence; nor a lunatic, except during a lucid interval; nor a person of non-sane memory; nor a person who is deaf, dumb, and blind. But a person, who is deaf and dumb merely, is not incompetent; and he may be examined through the medium of a sworn interpreter, who understands his signs. So, an infant of any age may be a witness, provided he appear sufficiently to understand the nature and moral obligation of an oath; for his competency depends not upon his age, but his understanding.

From want of religion.

443. It is sufficient if a witness believe in a God, the avenger of falsehood, in a future state of rewards and punishments, and in the moral obligation of the oath he is about to take. But a man, wholly without religion, and having no belief in the moral obligation of an oath, shall not be received to give evidence in any case whatever.

From interest; exceptions—rewards, prosecutor, accomplice,

444. It is a general rule of evidence, not to admit the testimony of a witness who is to be a gainer or loser by the event of the cause, whether such advantage be direct and immediate, or consequential only. There are some exceptions to this rule in criminal cases. A person entitled to a reward upon the conviction of the defendant is not thereby rendered incompetent to give evidence against him. The prosecutor is in all cases a competent witness to prove the offence, even though he entitle himself to the restoration of his stolen goods by the conviction, or to costs. An accomplice is a competent witness, although his expectation of pardon depend upon the defendant's conviction. So, an accessary is a competent witness against his principal; and the principal against the accessary; as, for instance, upon an indictment for receiving stolen goods, the person who stole the goods is a competent witness. But the fact of the witness being an accomplice, accessary, or principal, detracts very materially from his credit; and at least some of the leading circumstances of his story should be confirmed by other evidence. And if, upon an indictment against several, the accomplice be confirmed in the testimony he gives against some of the prisoners, but not as to the others, still this is holden sufficient confirmation to warrant the conviction of all. So, if an accomplice be confirmed as to the particulars of the story, he does not require confirmation as to the person charged. But where, upon an indictment against principals and accessaries, the case against the principal was proved by an accomplice, who was confirmed as to the accessaries, but not as to the principal, the jury were directed to acquit the prisoners. If a witness is equally interested on both sides, so that it is immaterial to him which is successful, he is then admissible for either party. And a remote or contingent interest; or wishes and a strong bias; or a belief without any foundation by the witness himself that he is interested; are not sufficient to render the evidence inadmissible, however they may affect its credit. As it was held no objection to a witness that he had laid a wager on the subject of the suit;—and again a woman, whose husband had been convicted, was allowed to give evidence against a prisoner, although she expected that, on his conviction, her husband would be pardoned.

equal interest, remote interest.

From being parties to the suit.

445. In civil actions neither party is allowed to give evidence for, or obliged to give evidence against, himself. In criminal cases the rule is the same; but it is not applicable to the prosecutor, for the indictment is at the suit, not of the prosecutor, but of the sovereign;

and the prosecutor is accordingly deemed a competent witness in all cases. The defendant, so far from being obliged to give evidence against himself, is not bound even to answer the questions put to him upon his examination before a magistrate. It sometimes happens however that the prosecutor, in order to exclude the evidence of a material witness for the defendant, prefers his indictment against both jointly; if, therefore, in such case, no evidence whatever be given to affect the person thus unjustly made a defendant, the judge, in his discretion, may direct the jury to acquit him in the first instance, so as to give an opportunity to the other defendant to avail himself of his testimony. So, if a party has been made a defendant by mistake.

446. It is a general rule of evidence that husband and wife cannot be witnesses either for or against each other; nor against any person indicted conjointly with the husband or wife. But if a husband is indicted for a personal injury to his wife, the latter is a competent witness for the prosecution; and *vice versâ*. A father or mother may be a witness for or against the child; a child, for or against the father or mother; a servant, for or against the master or mistress; a master or mistress, for or against the servant.

From relation to the parties.

447. Legal advisers are not permitted to give evidence of any matters confided to them by their clients in their professional capacity; but this does not extend to facts known to such adviser previously to his retainer; nor to any other confidential agents beside legal advisers.

From being legal advisers of the parties.

SECTION IX.

OF CONFESSIONS.

448. When a prisoner confesses before a magistrate the crime or misdemeanor with which he has been accused, or confirms any former confession, the magistrate is to be careful to have such confession, or confirmation of a former confession, witnessed by as many of their officers, or other creditable persons present at the time it is made, as the Mahomedan law requires to give it validity, and to cause such witnesses to be in attendance at the sessions. *Beng.* Reg. IX. 1793. sect. 6. *Ced. Prov.* Reg. VI. 1803. sect. 6.

How to be taken.

By magistrate.

Confession before magistrate to be witnessed; and number of witnesses required;

449. Confessions are to be attested generally by four, or at least by three creditable and respectable witnesses, who can read and write. C. O. No. 23 of vol. 1.

not less than three.

450. The pleaders of a civil court may be called upon to attest confessions before the magistrate, and are liable to dismissal for refusing to do so. Const. No. 101.

Pleaders may be required to attest confessions.

451. The magistrate, in examining the witnesses to a written confession, should be careful to ascertain, that they, as well as the party confessing, were fully informed of the contents of it. C. O. No. 89 of vol. 1, para. 5.

Proof of mofussil confession.

452. The deposition of a witness to the confession of a prisoner cannot be received in evidence against him, unless it be taken in the presence of the prisoner. N. A. R. vol. 1, page 300.

Must be taken in the presence of the prisoner.

How far the magistrate may cross examine the prisoner as to his mofussil confession.

453. In a case where the session judge objected to a confession being received as evidence against a prisoner, because it had been obtained by cross examination as to a mofussil confession, which had not been proved,—the court held that the magistrate was quite regular in questioning the prisoner as to the fact of the mofussil confession, to give him an opportunity of denying it, or of explaining whether it had or had not been obtained by improper means. N. A. R. vol. 4, page 245.

All confessions to be free and voluntary.
Evidence to the commission of the offence required independent of confession.
Precautions against ill treatment.

454. But the magistrates are strictly enjoined to satisfy themselves, that all confessions made by prisoners are free and voluntary; and notwithstanding such confessions, they are invariably to summon, and to bind over to attend at the sessions, the witnesses to the commission of the offence alleged against the prisoner, in the same manner as if the prisoner had denied the charge. The magistrates are further required to take special care, that persons upon being apprehended, are not made to suffer corporal punishment, or otherwise ill-treated under the pretence of compelling them to answer truly to questions that may be put to them, or under any other pretext whatever. *Beng.* Reg. IX. 1793, sect. 6. *Ced. Prov.* Reg. VI. 1803, sect. 6.

Examination of all prisoners to be made in the presence of the magistrate.
Mode in which confessions are to be certified.

455. The examination of all prisoners is to be made in the presence of the magistrate; and he is in no case to certify, or otherwise to authenticate, any paper, purporting to be a confession, which has not been made on a personal examination by himself. And more effectually to provide against the objectionable course of allowing the examination of prisoners to be taken in the *serishta* in the magistrate's absence, magistrates are required, in all cases of confessions before them, to certify the same in the following words: "I hereby "certify that this confession of —— was made by the said ——, and taken down in writing, "and attested by the subscribing witnesses, before me, and in my presence, on the —— "between the hours of ——; that, to the best of my belief, the confession was voluntary, and "that no interference, directly or indirectly, on the part of any person likely to influence or "intimidate the prisoner, was permitted." The magistrate is to attest this with his signature at length and the specification of his office. C. O. No. 54 of vol. 2, para. 20; and No. 90 of vol. 1.

456. It is not sufficient that the magistrate should verify the confession of a prisoner, written down in his absence: and confessions so taken were rejected as unworthy of credit. N. A. R. vol. 2, page 70.

Precautions to be observed in taking confessions, that the prisoners may not on the one hand be dissuaded from confessing, and on the other be compelled to do so by improper means.

457. When accused persons, who have confessed in the mofussil, are forwarded by the police, they should not be allowed to mix with the prisoners in the common jail previous to their examination by the magistrate, lest they should be put upon their guard by them, and consequently decline to make any confession or discovery. On the other hand such persons, if examined immediately, and while under a strong impression of any improper treatment which they may have experienced in the mofussil, may be induced, before they have had time to recollect themselves, to confirm fabricated and extorted confessions. In order to guard against this danger, the magistrate should be mild and patient in his examination; and should exert himself to ascertain whether the prisoners have been subjected to such improper treatment; and to make them sensible that they are secure against such practices while under his care; he should be particularly attentive that alleged mofussil confessions be not

recorded as confessions made before himself, from being read to prisoners and receiving their assent; but should satisfy himself, by making prisoners tell their own story, that their statements are deliberate and spontaneous; and lastly, he should be watchful, that prisoners are not subject in the jail, or other places of confinement, to any continuance of the improper means, to which they are liable at the thanas. The police officers, under whose charge prisoners are sent in, should not be permitted to be present during their examination; and the magistrate should see that the rules, prescribed (in sect. 19, Reg. XX. 1817) for the guidance of police officers in receiving petitions are carefully enforced. The too easy admission of confessions will always operate as a temptation to impose false confessions on the courts; while if they are received with circumspection, and all the additional evidence, which the case may admit of, uniformly required and carefully taken, the fear of detection must prove a powerful discouragement to the practice.[a] C. O. Nos. 73 and 78 of vol. 1.

By session judge. Irregularities of the magistrate or the police to be noticed.

458. The session judge is carefully to examine the subscribing witnesses to foujdary confessions, so as to ascertain that there has been no deviation from the above rules, and that the confessions were taken under the immediate inspection of the magistrate, and under circumstances which excluded any improper interference or influence. He is to notice in his proceedings any irregularities of the police officers, which have escaped the animadversion of the magistrate; and to report any transgressions on the part of the latter to the Nizamut Adawlut. C. O. No. 73 of vol. 1, paras. 10 and 11; and No. 54 of vol. 2, para. 22.

Confession to be tenderly received.

459. The confession of a prisoner is always to be received with circumspection and tenderness. *Beng.* Reg. IX. 1793, sect. 47. *Ced. Prov.* Reg. VII. 1803. sect. 15, cl. 1.

Previous confessions to be read to prisoner, and witnesses.

460. Unless the prisoner deny *in toto* having made *any*, his mofussil or foujdary confession or examination adduced in evidence against him, though not proved by the testimony of the subscribing witnesses, should be read and explained to him at the time of taking his defence, and his admission or denial of the same entered on the record. It should also be read and explained to the subscribing witnesses. If the subscribing witnesses are unable to prove a confession, the judge may call upon the person by whom it was written, and the police officer, magistrate, or other officer before whom it was made, and by whom it is attested, to depose to any circumstances required to be known connected with it. Const. No. 763. N. A. R. vol. 2, page 351.

The writer of the confession, and the officer before whom taken, may prove it.

461. It is irregular to cause the mofussil confession of a prisoner to be read over to him at the trial, before the subscribing witnesses to it have been examined. N. A. R. vol. 5, page 54.

How far judge may examine prisoner as to previous confession.

462. It is irregular in a session judge to examine a prisoner as to his confession, made before the police officers or magistrate after recording his denial of the same. N. A. R. vol. 2, page 185.

Trial to proceed though prisoner pleads guilty.

463. Though the prisoner plead "guilty," the trial should proceed in the ordinary course. Const. No. 650.

(a) C. O. No. 18 of vol. 3, contains an extract from a minute recorded by Sir Thomas Munro, when Governor of Madras, on the subject of extorted confessions.

Translation in referred cases.

464. The original confessions of prisoners, taken down in their peculiar dialects, should be accompanied by translations on all occasions of reference to the Nizamut Adawlut.(a) C. O. No. 281 of vol. 1.

General Rules.

Must be voluntary.

465. The confession must be free and voluntary; [v. ¶ 454.]—for if it is obtained by improper influence, by promises, intimidation, or threats, it cannot be received in evidence; [N. A. R. vol. 1, pages 104, 251; vol. 2, page 166; vol. 4, page 269.]—yet confessions so improperly obtained have occasionally been admitted, when corroborated by other evidence, [N. A. R. vol. 1, page 81.]—such circumstance being considered in mitigation of punishment; [N. A. R. vol. 3, pages 156, 325.]—and a confession made in hope of benefit, though nowise improperly obtained, was allowed in mitigation. [N. A. R. vol. 1, page 98.]—It is not an objection to the admissibility of a confession, that it was made by the prisoner after being desired by the police officers not to fear to tell the truth; [N. A. R. vol. 1, page 33.] —nor is it an objection, that the prosecutor promised not to prosecute, if the confession is corroborated; [N. A. R. vol. 2, page 96; vol. 3, page 69.]—nor is a confession invalidated by the fact of a former confession having been made to a person not a police officer, under promise of release; nor by the non-observance of the rule contained in cl. 3, sect. 19, Reg. XX. 1817, which requires that whenever a confession is taken at night, or at any other place than the police thana, the special reason for its being so taken shall be stated in the darogah's report. [N. A. R. vol. 2, page 291.]—Although a confession, improperly obtained, is not admissible, yet any facts, which have been brought to light in consequence of such confession, may be properly received in evidence. [N. A. R. vol. 3, page 156.]

Natural value and sufficiency as proof.

466. It is not regular to convict a prisoner solely on his own confession; but evidence must be taken, to the actual commission of the crime with which he is charged, [v. ¶ 454 and 463; N. A. R. vol. 1, page 255; and vol. 4, page 229.]—and the prisoner may be acquitted in spite of his confession, though voluntarily made. [N. A. R. vol. 2, page 21; vol. 3, pages 242, 263, 325; vol. 5, page 103.]—A *thana* confession should be borne out by other evidence; [N. A. R. vol. 2, page 172.]—and is alone insufficient for conviction; [N. A. R. vol. 3, pages 23, 274.]—and even though acknowledged and confirmed by prisoner, it requires corroboration by other evidence: [N. A. R. vol. 3, page 97.]—but if proved to have been freely and voluntarily made, and supported by other evidence, it is sufficient. [N. A. R. vol. 3, page 345.]—A parole confession made before private individuals is not admissible, [N. A. R. vol. 2, page 45.]—however numerous the witnesses to it may be. [N. A. R. vol. 2, page 84.] The confession of a minor is admissible, if he is *doli capax*. [N. A. R. vol. 2, page 2.]

Effect of, as regards the person confessing.

467. If a confession is admitted, the whole of it must be taken together, in order to show distinctly the full meaning and sense of the prisoner; and due weight must be allowed to all the circumstances which he alleges in his own favor; [N. A. R. vol. 1, pages 39, 110, 130, 156, 240; vol. 2, pages 32, 48, 67, 98, 147, 256, 408, 456; vol. 3, pages 25, 154, 207, 236, 244, 300.]—and the prisoner need not call evidence to prove the assertions he makes in exculpation; [N. A. R. vol. 1, page 192.]—but such exculpatory pleas will be rejected,

(a) But this refers now only to cases of peculiar dialects; C. O. No. 94 of vol. 3 dispenses with translations of all proceedings in criminal trials referred, with the exception of those cases, tried with the assistance of the law officer, in which the session judge recommends a capital sentence.

if they are disproved by credible evidence; [N. A. R. vol. 1, pages 144, 161; vol. 2, page 183.] or if afterwards retracted by the prisoner: [N. A. R. vol. 2, page 472.]—and the court will always put its own construction on the degree of the prisoner's guilt, as shown in his own narrative,—whether against him, [N. A. R. vol. 1, page 60; vol. 2, page 79; vol. 3, pages 43, 238; vol. 4, pages 54, 127; vol. 5, page 61.] or in his favor. [N. A. R. vol. 2, page 84.] If the prisoner subsequently retracts his confession, and it is not corroborated by other evidence, it may yet be used against him, if proved to have been given voluntarily; [N. A. R. vol. 1, page 381; vol. 2, pages 39 and 79.]—but not when there is no proof that the fact charged has been committed. [N. A. R. vol. 1, page 143.]—Evidence, consisting of two confessions made at the thana, one of which contained an exculpatory plea, while the other was wholly criminatory, was considered insufficient for conviction. [N. A. R. vol. 3, page 201.]

As regards others.

468. Magistrates ought not to commit for trial, or hold to security, any person solely on the ground of the accusation of confessing prisoners, that such persons were their accomplices or concerned in the offence charged; but this is not meant to restrict them from making such further inquiry as they consider necessary, or from acting according to the result. C. O. No. 156 of vol. 1.

Mahomedan Law.

Must be voluntary; and person confessing must be of sound mind.

469. In all criminal accusations before a Mahomedan court of judicature, the greatest weight is given to the confession of the party accused, whether made before the court or elsewhere, provided it be voluntary; and provided the person confessing be of sane mind and mature age, because the declaration of an infant or an idiot is unworthy of any credit; and he is in law incapable of any act which may cause injury to himself. It is also a general rule, that the whole of what is stated in explanation must be taken as part of the confession; but it seems doubtful how far the prisoner is bound to prove his exculpatory pleas. In the *Zeeadat* of Imam Mahomed it is stated to be a general principle that "whoever confesses an act which subjects him to a legal penalty, and subsequently offers a plea to exonerate himself from the penalty, must establish such plea by proof: but if he deny that which occasions the penalty, his denial is admitted." This passage is open to ambiguous construction; and, from the case to which it is applied, might be understood to require proof of a plea of justification in all cases of acknowledged homicide. The author of the *Humadeeyah*, who cites the *Zeeadat*, however, deduces from the above quotation a certain inference, that the statement of an act under "circumstances, which prevent its being penal, is a virtual denial of the cause of penalty;" and this conclusion is undoubtedly just and rational, when there is no evidence against the acknowledger of the act, besides his own statement of the case.(a) According to the law officers of the Nizamut, there are two opinions; one, that the fact pleaded in justification is inadmissible without proof; this is *kiyas*, or the apparent construction of the law; the other, founded on *istahsan*, or the more profound or approved construction, is that no proof is required; the latter opinion is preferred.(b)—In a case of *zina* the confession is insufficient for punishment, until it has beeen repeated four times, the kazee being directed to refuse it on the three first occasions, and even then to suggest to the person confessing the mention of circumstances in mitigation or exculpation. In other cases a single confession is

Exculpatory pleas.

Completeness of confession.

(a) Harington's Analysis, vol. 1, page 260.

(b) This opinion is stated by Harington to be in the futwa given in N. A. R. vol. 1, page 151,—though this part of it is not mentioned in the printed report. See also N. A. R. vol. 1, page 192.

generally considered sufficient; though Aboo Yoosuf contends for the necessity of two confessions in cases of theft, in consideration of the number of witnesses required to make the evidence valid, advancing this as the reason why four confessions are required in *zina*. (a)—

Retractation.

Retractation of confession is permitted in all cases, the punishment of which is purely a divine or in other words a public right; but in cases of slander and other offences, in punishing which the right of the individual is either wholly or partially concerned, a confession once made is irrevocable. The nature of the offence is considered in the same manner when the confession is made during intoxication; for where the right of God only is affected, such confession is not sufficient for judgment. And a confession is invalid if any compulsion is used to extort it. When a confession as well as evidence is produced in proof of *zina*, the former must be complete in itself; for, if incomplete, it invalidates instead of strengthening the evidence. In confessions, as well as in evidence, much depends upon the expressions used; as, for instance, it is no proof of theft if a person confess that he took certain property without expressly declaring that he stole it. There is no difference between *zimmees*, slaves, and free Mussulmans with respect to confessions. (b)

Made during intoxication.

Joined to evidence.

Effect of expressions in.

Descriptions of persons.

English Law.

Must be voluntary.

470. (c) Confession, to be admissible, must be free and voluntary. And in the case of a confession before a magistrate or other person, if it appear that the defendant was induced to make it by any promise of favor, or by menaces, or undue terror, it shall not be received in evidence against him. Thus, if it be said to the defendant that it will be better or worse for him if he do or do not confess; or even if a confession be procured by a threat to take the defendant before a magistrate, if he do not give a more satisfactory account; or to send for a constable; or by saying "tell me where the things are, and I will be favorable to you"; or "you had better tell all you know"; the confession will not be admissible. Where the prosecutor asked the defendant for the money that he had taken, and before it was produced said, "I only want my money, and if you will give me that, you may go to the devil if you please," upon which the defendant took part of the money from his pocket and said, that was all he had left; the evidence was held inadmissible. And a confession with a view, and under a hope of being thereby permitted to turn king's evidence, has been holden inadmissible. To exclude a confession made under the influence of a promise or threat, the promise or threat must be of a description which may be presumed to have such an effect upon the mind of the defendant, as to induce him to confess: and therefore an exhortation, admonition, promise, or threat, proceeding at a prior time from some one who has no concern in the apprehension, prosecution, or examination of the prisoner, but interferes without any authority, will not be sufficient to render a confession inadmissible. The inducement must also refer to a temporal benefit; for hopes, which are referrible to a future state merely, are not within the principle which excludes confessions obtained by improper influence. But it is no objection to the admissibility of a confession, that it was elicited by questions, if no undue influence be used:—or that it was made under a mistaken supposition that some of the defendant's accomplices were in custody, even though it were created by artifice with a view to obtain the confession. And a letter given by a defendant to the gaoler to put into the

(a) Hed. Trans. vol. 2, page 86. (b) Harington's Analysis, vol. 1, and Hed. Trans.

(c) The English law here given is taken from "Archbold's Pleading and Evidence in criminal cases."

post is evidence against him. If the promise or menace, &c., take place previously to the prisoner's being brought before the magistrate, the court will, in general, refuse to admit the confession to be given in evidence, unless it appear that the prisoner was undeceived by the magistrate, and cautioned by him not to expect the favor, or not to regard the menaces held out to him. But, where a defendant, having been told by a constable that he might do himself some good by confessing, afterwards asked the magistrate if it would benefit him to confess, and the magistrate saying he could not say it would, the defendant then declined to confess, but afterwards, when going to prison, made a confession to the constable; the confession was admitted, because the answer of the magistrate was sufficient to remove any expectation which the constable might have caused. If a confession be obtained by undue means, any statement made under the influence of that impression cannot be received. The only questions in these cases are—was any promise of favor, or any menace or undue terror, made use of, to induce the prisoner to confess?—and if so, was the prisoner induced by such promise or menace, &c., to make the confession? If the judge be of opinion in the affirmative, upon both these questions, he will reject the evidence. If, on the contrary, it appear to him, from circumstances, that, although such promises or menaces were holden out, they did not operate upon the mind of the prisoner, but that his confession was voluntary notwithstanding, and he was not biassed by such impressions in making it, the judge will admit the evidence.

Discovery made in consequence of confession, which is inadmissible.

471. Although a confession, for the above or any other reasons, may not be receivable in evidence, yet any discovery that takes place in consequence of such confession, or any act done by the defendant, if it be confirmed by the finding of the property, will be admitted; as for instance, if a man by promise of favor be induced to confess that he knowingly received certain stolen goods, and that they are in such a room of his house, and the goods be found there accordingly, although the confession itself cannot in that case be given in evidence, yet it may be proved, that, in consequence of something the witness heard from the defendant, he found the goods in question in the defendant's house.

How proved.

472. Admissions or confessions to other persons than magistrates, if in writing, are proved as any other written instrument; if by parol, they are proved by parol evidence of some person who heard them.

Effect of.

473. In all cases, the whole of the confession should be given in evidence; for it is a general rule, that the whole of the account which a party gives of a transaction must be taken together; and his admission of a fact disadvantageous to himself shall not be received, without receiving at the same time his contemporaneous assertion of a fact favorable to him, not merely as evidence that he made such assertion, but admissible evidence of the matter thus alleged by him in his discharge. It has been said that, if there be no other evidence in the case, or none which is incompatible with the confession, it must be taken as true; but the better opinion seems to be, that, as in the case of all other evidence, the whole should be left to the jury, to say whether the facts asserted by the prisoner in his favour be true.

Only against himself.

474. Also it may be necessary to observe, that a man's confession is evidence only against himself, and not against his accomplices; although he charge his accomplice in his hearing, and the accomplice do not deny it. So, the confession of a principal is not evidence against an accessary to prove the guilt of the principal, which must be proved *aliunde*.

SECTION X.

OF THE FUNCTIONS OF THE MAGISTRATE.

Appointment.

475. By sections 2 and 3, Reg. IX. 1793 for *Bengal*,—sects. 2 and 3, Reg. XVI. 1795 for *Benares*,—and sects. 2 and 3, Reg. VI. 1803 for the *Ceded Provinces*,—the civil judges were constituted magistrates of the districts under their respective jurisdictions, with a provision that their local jurisdictions, as magistrates, should be the same as that of the civil court. It was however "found expedient to appoint a distinct officer to execute the duty of magistrate;" and consequently by sect. 2, Reg. XVI. 1810, the government was empowered to make such distinct appointment, and to direct whether the judge of the civil court should, or should not, exercise a concurrent authority as joint magistrate: and by section 6 of the same regulation it was enacted that the officers so appointed should be guided by the regulations in force for the discharge of the duties of the magistrates' office.

Oath of office.

476. Previous to entering upon the execution of the duties of his office, a magistrate is to take and subscribe the following oath: —— "I, A. B. appointed magistrate of the zillah of —— solemnly swear, that I will to the best of my ability preserve the peace of the zillah, over which my authority extends; that I will act with impartiality and integrity, and will not exact, or receive, nor knowingly allow any other person to exact, or receive, directly or indirectly, any fee, reward, or emolument whatsoever, in the execution of, or on account of any matter relating to, the duties of my office, excepting such as the orders of the Governor General in Council do or may expressly authorize; and that I will perform the duties of my office, according to the best of my knowledge, abilities, and judgment, conformably to the regulations that have been, or may be passed, by the Governor General in Council. So help me GOD. *Beng.* Reg. IX. 1793. sect. 2. *Ben.* Reg. XIV. 1795. sect. 2. *Ced. Prov.* Reg. VI. 1803. sect. 2. *Conq. Prov.* Reg. IX. 1804. sect. 7.

Duties.
GENERAL.

477. It is the duty of the magistrate to apprehend murderers, robbers, thieves, housebreakers, all disturbers of the peace, and persons charged before him with crimes or misdemeanors. *Beng.* Reg. IX. 1793. sect. 4. *Ced. Prov.* Reg. VI. 1803. sect. 4.

A chief duty of the magistrate is to superintend and control his subordinates.

478. The value of a magistrate's service is more dependent on the skill and judgment with which he directs and controls the acts of all subordinate officers than upon the work he can himself perform. The time of any officer exercising civil or criminal jurisdiction ought not to be employed in details, which can be well performed by the ministerial officers. No business ought to be performed by the head of the office, which can be well done by his subordinate officers, covenanted or uncovenanted, if his attending to such duties will interfere with his more important duties of directing and controlling every branch of his office, and of aiding, instructing, and encouraging each in the proper performance of the particular duties assigned to him. C. O. No. 229 of vol. 2.

MISCELLANEOUS.

Dispossession of moveable property.

479. In a dispute for chattels or other moveable property, if the fact of illegal and forcible dispossession have been established, the magistrate is competent to interfere with a view to restitution; but not otherwise. Const. No. 1349.

Orders of civil court.

480. A civil judge cannot call upon a magistrate to enforce his orders if resisted. Const. No. 1209.

481. When the orders of a magistrate are not subsidiary to a civil action (as in the case of a summary award of wages under sect. 6, Reg. VII. 1819), the civil court has no power to issue an injunction to him for the purpose of stopping execution of his order. Const. No. 1158.

Decisions of punchayuts.

482. Judicial functionaries have no power to carry into effect the decisions of punchayuts under Reg. IX. 1833, as that duty lies within the province of the revenue authorities. Const. No. 895.

Collector.

483. A magistrate is not competent to fine a collector of revenue for refusing, or omitting, to obey his injunction: the rule of sect. 36, Reg. XIV. 1793, is restricted to the orders of the civil courts. Const. Nos. 364 and 414.

Charges against uncovenanted civil officers.

484. A magistrate cannot receive a charge of bribery against a moonsiff, sudder ameen, or principal sudder ameen, until the civil judge after the requisite preliminary enquiry shall have given his sanction to the prosecution. But if the charge is preferred with the assent of the judge, the magistrate will dispose of it as any other case of misdemeanor. Const. No. 781.

Chowdhrees.

485. The magisterial authorities are prohibited from interfering in the election, recognition, or removal of chowdhrees of trades and professions. (This rule supersedes Const. No. 816.) C. O. No. 163 of vol. 3.

Illegal batta.

486. A magistrate is not competent to fine or imprison muhajons or shroffs, who may be in the habits of demanding illegal batta on Company's rupees. Const. No. 1156.

Exchange.

487. A magistrate has no authority to interfere to regulate the exchange of copper into silver. Const. No. 751.

Short weights.

488. Magistrates are competent to punish the offence of using short weights as a fraud, under the general regulations; but they cannot prescribe a current standard of weight. Const. No. 1274.

Magistrate is to compel the surrender of the records of a canoongoe.

489. On the death, resignation, or removal of a canoongoe, the records of his office are to be made over to his successor; and the magistrate is enjoined, on the application of the collector, to interpose his authority, in all cases in which it is necessary to enforce the surrender of such records. And the refusal or manifest evasion of any person in possession of such records to deliver them up, on the requisition of the magistrate, subjects him to the penalties prescribed by the regulations for resistance to the process of the magistrate. *Ced. Prov. and Ben.* Reg. IV. 1808. sects. 9 and 10. *Shahabad, Tirhoot, Sarun, and Behar,* Reg. II. 1816. sects. 9 and 10. *Ramghur, Bhaugulpore, and Purnea,* Reg. II. 1817. *Cuttack, Puttaspore, and the pergunnahs dependent on it,* Reg. V. 1816. sects. 9 and 10; *extended to Midnapore and Hidgelee by* Reg. XIII. 1817. *Bengal,* Reg. I. 1818. sect. 2; and Reg. I. 1819. sect. 3, cl. 1.

Magistrate to assume charge of treasury;

and to receive charge of public property.

490. It is the duty of a magistrate or joint magistrate residing at the same station with the collector or deputy collector, to assume charge of the treasury of the revenue officer, during the authorized or unavoidable absence of the latter. All public functionaries are required to receive charge of public property when the officer having custody is unable, from any circumstances to retain charge of it. C. O. No. 81 of vol. 3.

Proclamations and circular orders, addressed to the inhabitants and the police, are not to be promulgated without sanction.

491. Magistrates should observe great caution, in addressing publications of a general nature to the inhabitants of the provinces; and should refrain from such measures without the sanction of government, when the delay in obtaining such sanction would not cause material public inconvenience, or at least without the knowledge and concurrence of the nearest local authority to which they are subject. So also magistrates should be particularly cautious in the promulgation of general or circular orders and instructions connected with the police; and they are enjoined to furnish the superintendent of police with a copy of all such orders which they deem it necessary to issue, immediately on their promulgation; or previously, if they are liable to objection. The superintendent of police will direct the magistrates to rescind, alter, or modify any such orders; and session judges will not interfere in any way with the exercise of this power. In more important matters such orders must be submitted to government; and serious notice will be taken of any breach of these rules. C. O. Nos. 112 and 264 of vol. 1; and No. 7 of vol. 3, para. 2. Const. No. 382, paras. 4 and 5. C. O. Sup. Pol. L. P. No. 3 of 1838; and No. 6 of 1844.

So also enquiries into the resources of a district.

492. Magistrates are prohibited from making enquiries into the resources of the district, its population, mineral productions, &c., by means of the police, without the sanction of the superintendent of police. C. O. Sup. Pol. L. P. No. 7 of 1841.

Public business to be transacted in public offices.

493. In reply to a question whether magistrates can, under any circumstances, be permitted to transact the current business of their offices in their private dwellings, the court deemed it sufficient to observe that, when sitting as a criminal judge, the magistrate must sit in the established court house; and that they did not consider it necessary to enter upon the general question of the powers of a magistrate out of office. But it is said that the practice of transacting public business in private residences is objectionable, and it is interdicted. Const. No. 645. C. O. No. 21 of vol. 2.

Two orders in one case to be kept distinct.

494. When of two orders passed in any case, one is appealable to the sessions court and the other final, they are to be kept distinct and separate, and to be recorded in separate proceedings. C. O. No. 135 of vol. 3.

Register books.

495. The magistrate is to keep up two general register books; viz. *First*, a general register of all applications preferred direct to the magistrate*; *Second*, a general register of all reports received from the police darogahs†: and six books of subordinate entry; viz. *First*, a book of heinous offences‡; *Second*, a book of petty offences§; *Third*, a book of appeals from subordinate courts‖; *Fourth*, a book of references or proceedings received from other districts¶; *Fifth*, a book of cases preferred under Act IV. 1840**; and *Sixth*, a book containing all miscellaneous matters.†† All criminal cases are to be entered in the first instance in either of the general registry books, and then transferred to one of the subordinate ones for trial and disposal, excepting of course the cases referred to the subordinate tribunals.

* *Appendix B, No.* 4
† *Ibid, No.* 5.
‡ *Ibid, No.* 7.
§ *Ibid, No.* 8.
‖ *Ibid, No* 9.
¶ *Ibid, No* 10.
** *Ibid, No.* 11.
†† *Ibid, No.* 12.

When cases are finally decided, they should be sent to the record-keeper, who should keep a general register,* in which he should enter all cases thus received, giving the number of the case and other particulars, an abstract of the final order, and a note of the part of the office in which he has placed the papers. C. O. No. 144 of vol. 3.

* *Appendix B, No.* 6.

496. Magistrates ought frequently to visit the interior of their districts, and to make themselves more accessible to the people than they can be at the sudder station. C. O. Sup. Pol. L. P. No. 15 of 1839.

Magistrate proceeding into the interior.

497. Whenever a magistrate has occasion to proceed into the mofussil, he is to report to the superintendent of police the date of his departure, and that of his return to the sudder station, as well as the cause of his departure. In the Western Provinces, where the magistracy is still united with the collectorship, it seems that an officer must apply to the commissioner for leave to proceed into the interior of his district; but in the Lower Provinces this permission is no longer required. (*v.* C. O. No. 7 of vol. 3, para. 5.)—C. O. No. 10 of vol. 3; and No. 97 of vol. 2.

498. An officer, whose salary and other allowances amount in the aggregate to less than the rate of 23,000 rupees a year, is entitled to travelling allowance at 5 rupees a day, while actually employed in the interior of his district, or so much within that allowance as to make his total receipts amount to that rate. Bills for this allowance are to be countersigned by the superintendent of police. Govt. Orders, Jany. 13, 1840. C. O. Sup. Pol. L. P. No. 16 of 1838, and No. 162 A. Feb. 12, 1840.

Travelling allowance.

499. Government will sanction, as occasion may be shown, the purchase of single-poled tents at the expense of rupees 350 each, for the use of magistrates. Govt. Orders, Sept. 8, 1840. C. O. No. 65 of vol. 3. C. O. Sup. Pol. L. P. No. 22 of 1840.

Purchase of tent for magistrate;

500. If an assistant magistrate, appointed to a sub-division, requires a tent, a report should be made to the superintendent of police. C. O. Sup. Pol. L. P. No. 5 of 1846.

for assistant to the magistrate.

501. The session judge is to report to the Nizamut Adawlut every instance, in which the magistrate has been guilty of neglect, or misconduct, in the discharge of his duty; and omits or refuses to obey his orders. *Beng.* Reg. IX. 1793. sect. 63. *Ced. Prov.* Reg. VII. 1803. sect. 30. C. O. No. 233 of vol. 2, para. 3.

Neglect or misconduct on the part of the magistrate to be reported to the nizamut adawlut.

502. Upon a report made in pursuance of the foregoing provision, the Nizamut Adawlut, after such inquiry as may be judged necessary in proof or explanation of the circumstances stated, is to report the case to Government, if it appears to require such notice, with a copy of all proceedings and papers received on the subject of it. And in all cases wherein a covenanted servant of the Company employed in any of the criminal courts, or in any office of police, appears to the Nizamut Adawlut, to have been guilty of neglect of duty, or of other misconduct not expressly provided for by the regulations, that court is either to report the same to Government, or to advise and admonish the party, as the case may require. *Beng.* and *Ben.* Reg. II. 1801. sect. 14. *Ced. Prov.* Reg. VIII. 1803. sect. 24.

Which court is to enquire and to report to government, or to advise and admonish the offender.

503. When the charge of the office of magistrate devolves, from death, indisposition, or other casualty, to the senior assistant on the spot, without any express provision for the

Charge of office upon the death or

absence of a magistrate.

same having been made by government, an immediate report of the circumstances of the case is to be made by such assistant to government; and, till the receipt of orders, he is to confine himself to the discharge of his own duties, and to the exercise of such part of the powers of the magistrate as may be indispensably necessary for the immediate execution of processes from the sessions court, and the Nizamut Adawlut; for preserving the peace of the district, or for such other case of emergency, as will not admit of delay. *Beng.* and *Ben.* Reg. IV. 1796. sect. 5. *Ced. Prov.* Reg. XII. 1803. sect. 15.

What proceedings of his predecessor, if left unsigned, a magistrate may sign.

504. A magistrate having left certain roobucarees unsigned, on leaving the station on sick certificate, the acting magistrate was directed to sign the roobucarees, the orders of which might be recorded in the magistrate's English note-book in his hand-writing, certifying thereon that he had compared them with the note-book. In cases in which no note was recorded, the acting magistrate was directed to pass such order as might, on inspection of the proceedings, appear just and proper, leaving the party dissatisfied with it to appeal in the regular course. Const. No. 729.

Powers.

In petty offences extending to 15 days, or a fine of 50 rupees;

505. The magistrates are empowered to hear and determine, without any reference to the session courts, all complaints or prosecutions brought before them for petty offences, such as abusive language, calumny, inconsiderable assaults, or affrays; and to punish the offender when convicted, by committing him to prison for a term not exceeding 15 days, or by imposing a fine upon him; but the fine is in no case to exceed 50 rupees, unless the offender is a zemindar, independent talookdar, or other actual proprietor of land, paying an annual revenue to Government of more than ten thousand rupees; or a proprietor of ayma land, paying a quit revenue to Government exceeding five hundred rupees per annum; or of lakhiraj land, the annual produce of which is above one thousand rupees; in which cases such offender is liable to a fine not exceeding 200 rupees. The magistrate is to fix the amount of the fine upon a due consideration of the nature of the case, and the situation and circumstances in life of the offender. *Beng.* Reg. IX. 1793. sect. 8. *Ced. Prov.* Reg. VI. 1803. sect. 8.

and in cases of petty theft, extending to 30 rattans or one month.

506. The magistrates are authorized to hear and determine, without any reference to the session courts, all complaints or prosecutions brought before them for petty thefts, when they have not been attended with any aggravating circumstances, or committed by persons of notorious bad character, and to inflict upon the offenders corporal punishment not exceeding 30 ratans, or commit them to prison for a term not longer than one month, according as they think proper, upon consideration of the circumstances of the case. *Beng.* Reg. IX. 1793. sect. 9. *Ced. Prov.* Reg. VI. 1803. sect. 9.

General power extending to six months' imprisonment, plus fine of 200 rupees or additional six months';—and in cases of theft extending to six months' imprisonment plus 30 rattans,

507. In addition to the above powers, magistrates are further empowered, in all cases of conviction before them of any criminal offence punishable under the Mahomedan law and the regulations,—for which the above mentioned penalties are insufficient, or to which the above rules are not expressly applicable, and for which a more severe punishment than six months' imprisonment, with thirty ratans, or a fine of 200 rupees, has not been specifically prescribed, (in which case the prisoner, if there appear grounds for it, is to be brought to trial before the sessions)—to pass sentence of imprisonment not exceeding 6 months, with

corporal punishment not exceeding 30 ratans in cases of theft, or in other cases with a fine not exceeding 200 rupees, commutable if not paid, to a further period of imprisonment not exceeding 6 months; so that the entire period of imprisonment, under the sentence of a magistrate, in no case exceeds one year. Reg. IX. 1807. sect. 19.

508. A sentence of imprisonment for one year in lieu of stripes in addition to a sentence of 6 months' imprisonment passed by a magistrate, is not illegal under the wording of cl. 2, sect. 2, Reg. II. 1834.(a) Const. No. 1183.

or one year in lieu of stripes;

509. In addition to the sentence which a magistrate is empowered to pass by the above provisions, he is competent in certain cases to require the prisoner to furnish security to keep the peace, or in default to be imprisoned for that additional period, under Reg. IV. 1825. Const. No. 1290.

and also, in certain cases, one year in default of security.

510. In cases in which a magistrate may sentence to a term of imprisonment with labor, and also a fine commutable to a further period of imprisonment, the power of awarding labor extends equally to the latter period as to the former period; and in both cases the labor is commutable to a fine under cl. 1, sect. 3, Reg. II. 1834. If labor is not awarded for the first period, it should not of course be awarded in the second. Const. Nos. 972 and 1264.

Labor.

511. If a magistrate considers the sentence, which he is competent to pass under the above provisions, insufficient for the offence, he should commit the prisoner to the sessions. Const. No. 85.

When magistrate deems such sentence insufficient.

512. It rests with a magistrate to determine what is a "petty offence," and the commensurate punishment, provided he do not exceed the limitation prescribed as above for such cases. Const. No. 1353.

The magistrate is to determine the character of the offence.

513. A conviction by a magistrate in a trial, on the result of which he is expressly authorized by sect. 19, Reg. IX. 1807, to pass sentence to the extent specified therein, is not liable to be impeached as "a conviction without trial," on the ground of its not being a "regular trial before a judge aided by his law officer." Const. No. 259.

Conviction by a magistrate on trial is not a conviction without trial.

514. A magistrate is competent to punish as a misdemeanor, under the general powers vested in him by sect. 19, Reg. IX. 1807, any act which is declared by the regulations to be an offence, but for which no punishment is specified. Const. No. 1305.

Misdemeanor.

515. A magistrate having passed a sentence which was beyond his competency, the Nizamut Adawlut quashed the proceedings, and directed him to commit the prisoner to the sessions. Const. No. 684.

Sentences beyond competency are quashed.

516. A magistrate may decide and pass sentence of punishment, without reference to the sessions court, provided he does not exceed his competency under sect. 19, Reg. IX. 1807. Const. No. 121.

If within competency, he may punish without reference.

517. A prisoner was tried and acquitted by the sessions court on a charge of uttering counterfeit coin with intent to defraud; the magistrate subsequently sentenced the prisoner to a fine for having counterfeit coin in his possession, and not showing good and sufficient cause for the same. This was held to be irregular, because the latter point must have formed

Magistrate has not power to punish a prisoner, acquitted by the sessions court, for a minor offence in-

(a.) For the rules for the substitution of additional imprisonment for corporal punishment, see subsequent section "of corporal punishment."

cluded in the trial of the charge on which he has been acquitted.

part of the trial on the charge of which the prisoner was acquitted by the sessions court. Const. No. 362.

Duties of magistrate and collector vested in one person.

518. It is competent to the Governor General in Council to authorize a collector of revenue, or other officer employed in the management or superintendence of any branch of the territorial revenues, to exercise the whole or any portion of the powers and duties vested by the regulations in the magistrates or joint magistrates, or to employ a magistrate, joint magistrate, or assistant to a magistrate, in the collection of the public revenue. Reg. IV. 1821, sect. 2.

In such case, oath to be taken;

519. If a collector, or other revenue officer, is so appointed to perform the duties of a magistrate, or joint magistrate, he is to take and subscribe the oath prescribed by sect. 2, Reg. IX. 1793, and cl. 1, sect. 8, Reg. XIII. 1793, with such verbal alterations only, as may be consonant to the nature of the appointment. He is to be guided in the execution of those duties by the regulations which have been, or may be enacted for the guidance of those officers respectively, and by the orders of the superior courts of criminal judicature in all matters in which a controlling, or superintending power is vested in those courts. And he is also to be careful to preserve the records of his judicial and revenue offices separate, and distinct from each other. Reg. IV. 1821. sects. 3, 4, and 5.

regulations and orders by which to be guided;

and separation of records.

Head of the office to limit himself to matters of real importance, and to leave details to subordinates.

520. The magistrate and collector should leave all the business of the office at the sudder station to the joint magistrate and deputy collector, with the aid of the assistants; reserving to himself the general control of the police, and a general knowledge of the manner in which the business is conducted by his subordinates, to enable him to interfere whenever he may, for any special cause, deem it necessary. It is important that the native establishments, as well as the people, should see that the chief control is retained in the hands of the magistrate and collector, and that he is equally anxious in regard to every part of his duties. To effect this, he must limit himself to matters of real importance, leaving the details, under control on his own part, in the hands of his subordinates, and not doing business, which can be efficiently performed by them. Such officers are strictly prohibited from holding cutcherry at the same time in the judicial and revenue departments. C. O. No. 151 of vol. 2.

Not to hold cutcherry in both departments at the same time.

What magisterial duties may be entrusted to the assistant collector.

521. The duties of a magistrate vested in a collector cannot be delegated to an assistant under sect. 8, Reg. IV. 1821, (which defines the duties of an assistant to the collector) in those cases in which such delegation would be contrary to the provisions of Reg. IX. 1807, Reg. III. 1821, or Reg. I. 1822. Const. No. 603.

Independent joint-magistracy created.

Government to decide how and where the sessions are to be held

522. In case of an officer being vested with magisterial powers, and deputed permanently or temporarily to exercise them within a portion of a district, or of an officer's being placed in charge of a tract of country comprising portions of several jurisdictions, it is competent to government, at the time of erecting such authority, or at any time subsequently to determine and prescribe, by an order under the official signature of a secretary to government, at what station and in what manner prisoners committed to take their trial before the sessions for offences perpetrated within the limits assigned to such officer, are to be brought to trial for the same. Notice of such determination is to be given to the Nizamut Adawlut, which court is to take the necessary steps. Reg. VIII. 1822. sect. 6.

Liability.

How far liable to action in supreme court for official acts.

523. In order to render the provincial magistrates, as well natives as British subjects, more safe in the execution of their office, it is enacted, that no action for wrong or injury shall lie in the supreme court against any person whatsoever exercising a judicial office in the country courts for any judgment, decree, or order of the said court, nor against any person for any act done by or in virtue of the order of the said court. 24 George III. cap. 70. sect. 24.

524. The mofussil courts are protected by the above clause from actions for things done within their jurisdiction, though erroneously or irregularly done; but they are liable for things done wholly without jurisdiction, provided they had no knowledge or means of knowledge, of which they ought to have availed themselves, of that which constitutes defects of jurisdiction. And it is not merely in respect to acts in court, *sedente curiâ*, that the mofussil courts have an immunity; but in respect of all acts of a judicial nature. *Judgment of Privy Council*, Morton's Reports, page 397.

No rule or other process to be made on information against any such officer, until proper notice has been given to him.

525. In case of an information intended to be brought or moved for against any such officer or magistrate for any corrupt act or acts, no rule or other process shall be made or issued thereon, until notice be given to the said magistrate or officer, or left at his usual place of abode, in writing, signed by the party or his attorney, one month, if the person exercising such office shall reside within fifty miles of Calcutta, two months if he shall reside beyond fifty miles, and three months if he shall reside beyond one hundred miles from Calcutta, before the suing out or serving the same, in which notice the cause of complaint shall be fully and explicitly contained; nor shall any verdict be given against such magistrate, until it be proved on trial that such notice hath been given, and in default of such proof a verdict with costs shall be given for the defendant. 24 George III. cap. 70. sect. 25.

No magistrate liable in such case to arrest, until he has declined to appear.

526. No magistrate shall be liable in any such case to any personal caption or arrest, nor shall he obliged to put in bail, until he shall have declined to appear to answer after notice given as directed by this Act, and service of the process directing his appearance by himself or his attorney. 24 Geo. III. cap. 70. sect. 26.

Not liable to civil courts.

527. Magistrates and other officers who were not liable to prosecution in the Company's courts for damages, for acts alone in their official capacity, prior to the enactment of Act XI. 1836,[a] have not been rendered liable by that Act. Const. No. 1051.

Requiring the aid of the military.

Applications how to be made.

528. Whenever magistrates require detachments of troops, for the apprehension of public offenders, or for the maintenance of the peace in their respective districts, they are to state in writing, as fully and circumstantially as is practicable, the nature of the service required to be performed to the officer commanding the corps or companies, from which the detachment is to be furnished; leaving it to the commanding officer, on consideration of the circumstances stated, to judge of the strength of the force which should be employed in the execution of the duty in question. Reg. XI. 1806. sect. 14, cl. 1.

Responsibility of requiring aid rests with the ma-

529. The power thus vested in the magistrate, being founded upon the nature and exigency of the case, which may frequently require promptitude and decision, and will

(a) This Act made Europeans liable to the mofussil civil courts.

gistrate: the allotment of the force rests with the commanding officer; but he *must* grant the required aid.

seldom admit of a reference to government; it is the duty of commanding officers immediately to furnish the necessary military aid, whenever applications are regularly and publicly made to them by the magistrates for troops, for the maintenance of the peace, or for the support of the general police of the country. By those means the responsibility of calling in the aid of the military rests with the civil magistrates; and the allotment of the force depends upon the officers commanding; who are not, however, on occasions of this nature, to exercise any discretion in granting or withholding the required aid. But as it is, at the same time, essential to restrict the employment of military force to cases of absolute necessity, the magistrates are enjoined to confine their requisitions to cases of that description, and to report to government, whenever they may apply for military aid under this section; at the same time furnishing government with the necessary information respecting the circumstances upon which the application has been grounded. Reg. XI. 1806. sect. 14, cl. 2.

Requisition to be made only in cases of absolute necessity, and magistrate to report to government.

Report.

530. The report thus ordered to be sent to government is to be full and distinct; and copies of it are to be sent to the superintendent of police, and the session judge; the latter is to forward it to the nizamut adawlut with his own sentiments on each case, but is not to issue any orders direct to the magistrate. C. O. No. 68 of vol. 2; and No. 7 of vol. 3, para. 4. Const. No. 40.

Commanding officer to report to commander-in-chief.

531. The officers commanding troops, by whom such detachments are furnished, in pursuance of the applications of the magistrates, are immediately to transmit the necessary reports therof to the commander in chief. Reg. XI. 1806. sect. 14, cl. 3.

Military guards.
Applications for.

532. The magistrates, and other public officers authorized to require permanent guards for the protection of the public treasuries, stores, or other property, are to state fully and circumstantially the nature of the service necessary to be performed, to the officer commanding the corps from which the guards are required. On receipt of such information, the commanding officer is to furnish guards of such strength as he may deem necessary; provided that no public objection occurs to a compliance with the application, and that he is satisfied that the civil officer is entitled to make such application by the general rules and usages of the service. But the commanding officer is at liberty, in case he deems it necessary or proper on any public grounds, to suspend compliance with the application, and to refer the case to the commander-in-chief, who is to forward the representation to government for its decision, or to pass such orders as may appear to him to be proper. Reg. XI. 1806. sect. 15, cl. 1, and sect. 18.

Permanent guards not to be increased.

533. No augmentation is to be made in the number or strength of permanent guards without the express sanction of government. Reg. XI. 1806. sect. 15, cl. 2.

Temporary escorts.

534. The same rules are to be observed in applications for temporary escorts, as in those for permanent guards. Reg. XI. 1806. sects. 16 and 18.

Monthly statements of guards employed to be sent to government.

535. Magistrates and other officers in the judicial department are to transmit to government, on the first of each month, a statement of the guards, detachments, and escorts employed by them in the preceding month. Reg. XI. 1806. sect. 17.

Deputation by magistrate of European officer.

Power to depute and to furnish instructions.

536. Whenever it appears advisable to a magistrate to depute his assistant, or any European officer acting under his authority, being a covenanted servant of the company, to make a local investigation within the limits of his district, for the purpose of speedily and satisfactorily determining a boundary dispute, or other subject of inquiry in the foujdaree court, which, from the circumstances of the case appears to require the deputation of a European officer, instead of the employment of a local police officer, it is competent to the magistrate to order such deputation, and to furnish the officer so deputed with such instructions as appear necessary;—provided that such instructions are not inconsistent with the general regulations in force. Reg. XI. 1824. sect. 2.

May declare by whom the deputation allowance is to be payable.

537. Whenever the deputation of a European officer may be ordered at the request of a party in a suit, or for the purpose of inquiring into any local question of private right between two or more individuals relative to a case depending in the foujdaree court, it is at the discretion of the magistrate, by whom the deputation is ordered, or who is to determine the case to which it relates, to declare the whole or any part of the usual deputation allowance receivable by the officer so deputed, as well as every other authorized and necessary expense attending the local inquiry, to be payable by the party against whom the case is adjudged; or proportionally by each of the parties, if this appear just on due consideration of all the circumstances of the case. But if in any instance the magistrate is of opinion that it would not be proper from indigence or other cause to render the parties, or either of them, answerable for the whole or any part of the deputation allowance, he is authorized to discharge the same (subject to the usual audit) on the part of Government. Reg. XI. 1824. sect. 3.

Charges how to be recovered; and power of superior courts.

538. Such deputation charges, if not paid by the parties, are to be realized by the same process as costs of suit in civil cases; and a commissioner of circuit is competent to exercise the same power as the magistrate in ordering the deputation of an assistant duly qualified (i. e. vested with special powers), and to adjudge the payment of his deputation charges. Const. No. 678.

Deputations to be reported to government;

539. Such deputations are to be immediately reported to government, with a statement of the circumstances of the case; and the return of the officer so deputed is also to be immediately reported. Reg. XI. 1824. sect. 4.

and to the session judge, who may revoke.

540. A report of such deputation is also, in every instance, to be made without delay to the session judge, together with a copy of the proceedings: and if the reasons stated for the deputation do not appear sufficient, and the judge deems it unnecessary, or inexpedient, he is competent to revoke it, transmitting at the same time copy of his order with the proceedings and papers connected therewith to the Nizamut Adawlut, who will issue such final orders as they may deem just and proper. Reg. XI. 1824. sect. 5.

Only to be made in cases of urgency. Parties may attend.

541. Such deputations are not to be made except in cases of urgency, and for a short period. The parties are at liberty to attend the local investigation in person, or by any authorized agent. Reg. XI. 1824. sect. 6.

Justice of the peace. Appointment

542. The act of 21, George III. cap. 65 empowered the Governor General in Council, by commissions under the seal of the supreme court, tested in the name of the chief justice, to appoint covenanted servants of the Company, or other British inhabitants whom he might think properly qualified, to act as justices of the peace; and accordingly, by an order of government dated January 27, 1794, the magistrates throughout Bengal and Benares were respectively appointed justices of the peace within their several jurisdictions. But no person was capable of acting as a justice of the peace until he had taken and subscribed the prescribed oaths of qualification in the court of oyer and terminer of the presidency, and therefore all magistrates were required to take the oaths within six months from the date of their appointment.* Reg. II. 1796, preamble, and section 4.(a)

The same provisions are enacted by 33, Geo. III. cap. 52, sect. 151 and 152.

Supplementary commissions may be issued at any time.

543. The supreme court shall and may from time to time, upon the order or warrant of the executive government, issue separate commissions to any persons not named in the general commission of the peace last issued, who by law are capable of being appointed to the office of justice of the peace, and who shall be nominated and appointed by such executive government to act as justices of the peace. All such commissions shall be issued in the name of the Queen's Majesty, her heirs and successors, under the seal of the supreme court, and tested in the name of the chief justice of the said court, and shall be filed on record in the court of oyer and terminer, as supplementary to the general commission of the peace last issued, which shall remain in full force. Act VI. 1845.

New commission comprising all covenanted civil officers.

544. A new commission of the peace has been issued from the supreme court, comprising the names of all the covenanted civil officers employed under this government. C. O. No. 213 of vol. 3.

May qualify by taking the oaths in any court of justice within the provinces.

545. All persons nominated and appointed in any commission of the peace are capable of acting as justices of the peace in every respect, according to the tenor of such commission, upon taking and subscribing in any civil or criminal court of justice within the places in and for which any such commission has issued before the officer presiding in such court, whether such officer be a justice of the peace or not, the oaths† appointed to be taken by justices of the peace; and the subscription of such persons to the said oaths are to be deposited and kept with the records of the courts of justice in which the said oaths have been administered.(b) Act XVI. 1841. sect. 1.

† *v. appendix C. No. 7.*

Powers of two justices vested in one.

546. All powers whatever in criminal cases, which may be exercised by two justices of the peace within and for the provinces, districts, and countries of Bengal, Behar, and Orissa, and within and for the presidency of Fort William in Bengal, and places thereto subordinate, may be exercised by one such justice. Act XXXII. 1838. sect. 1.

(a) The magistrates in the Ceded Provinces were required to qualify themselves in the same way by cl. 5, sect. 19. Reg. VI. 1803.

(b) This is in accordance with 53 Geo. III. cap. 155, sect. 112, except that it was required therein that the officer presiding in the court should himself be a justice of the peace.

SECTION XI.

OF THE FUNCTIONS OF THE JOINT MAGISTRATE.

Appointment.

547. Whenever it appears necessary for the despatch of public business, or for any purpose of police, or otherwise, to appoint an assistant magistrate (a) in any zillah or in any part thereof, it is competent to Government to make such appointment under the provisions contained in this regulation. Reg. XVI. 1810. sect. 4.

Oath.

548. Previously to entering upon the execution of his duties, the joint magistrate is to take and subscribe the oath prescribed for the office of magistrate, with such verbal alterations only as may be consonant to the nature of the appointment. Reg. XVI. 1810. sect. 5.

To be guided by the regulations. Invested with full powers of magistrate.

549. The joint magistrate is to be guided by the general regulations, as far as they are applicable to his duties; and, for the due execution of such duties, he is invested with the same powers, as by the regulations are vested in the magistrate. Reg. XVI. 1810. sect. 6.

To be guided by the instructions of the Nizamut Adawlut.

550. The special duties to be performed by a joint magistrate are to be determined by Government; but in all matters relating to practice and form, as well as in all points not specifically provided for by this, or any other regulation, he is to be guided by the instructions of the Nizamut Adawlut. Reg. XVI. 1810. sect. 7.

Process of, how to be executed.

551. All process issued by a joint magistrate is to be under his official seal and signature; and is to be executed by the officers employed under himself, or by those of the magistrate, as circumstances may direct, and may appear most conducive to the public service. The magistrates, their police officers, and all other persons acting under them, are required to aid and support the joint magistrates, appointed under this regulation, in the execution of any process issued by them under their official seals and signatures; and resistance to any process so issued is punishable in like manner as resistance to the process of a magistrate. Reg. XVI. 1810. sect. 8.

Joint magistrate subordinate to magistrate.

552. A joint magistrate (when not acting as magistrate, in the absence of the latter) is to be considered subordinate to the magistrate, in the general discharge of his official duties, as far as is consistent with the provisions contained in this regulation. In all cases of a difference of opinion between the magistrate and a joint magistrate, the latter is to conform to the directions of the former, until a reference can be made to the superior courts, for a determination upon the subject. But it is not intended that any appeal should lie to the magistrate from the sentence of a joint magistrate, whether for punishment, or acquittal,

Appeal from, does not lie to magistrate.

(a) The reader will mark the difference between an assistant magistrate, and an assistant to the magistrate: the former is now always called a joint magistrate, which term is exclusively applied by the regulation, from which the above quotation is made, to such magistrates as were vested (by section 3) with a concurrent authority in a contiguous jurisdiction. To prevent confusion the title of joint magistrate, as now in use, is substituted throughout the text for that of assistant magistrate, which is obsolete. The rules here quoted have, of course, no application to independent joint magistrates who are in fact magistrates of subordinate districts in which there is no session judge, the sessions being held by the judge of a neighbouring zillah.

or from his orders for the commitment of prisoners, or holding them to bail to take their trial at the sessions; the joint magistrate being vested with the full powers of magistrate in all such cases, within his jurisdiction, and his proceedings therefore being open to the regular control of the superior courts. Reg. XVI. 1810. sect. 9.

May correspond directly with superior authorities in urgent cases, but generally through magistrate.

553. When not stationed at the same place with the magistrate, they are authorized, in all cases requiring despatch, to correspond directly with government, the Nizamut Adawlut, the session judge, or other public authorities. But all monthly and other periodical reports or accounts, which may be required from a joint magistrate, and generally all official communications, which he may have to make to any superior authority, and which may not require immediate despatch, without passing through the magistrate, are to be transmitted through the channel of the latter, provided he is not absent from his jurisdiction. Reg. XVI. 1810. sect. 10.

POLICE.

How far subordinate to.

554. The police and other establishments of native officers, employed under a magistrate, and not ordered to be placed under the immediate authority of a joint magistrate, will continue under the usual control of the magistrate. But all native officers so employed are directed to furnish any joint magistrate, having authority over them under this regulation, with every information required from them, as well as generally to obey all orders issued to them by him, on pain, in case of neglect or failure, of being fined, suspended, or dismissed from office under the authority, or at the representation of such joint magistrate according to the regulations in force. Government further retains a discretion of placing any part of the police, or other public establishments, under the immediate control of a joint magistrate, when it may appear expedient. Reg. XVI. 1810. sect. 11.

May be placed under his immediate control.

When not so, under the control of magistrate.

Example.

555. When the police establishment of the thannas, within the limits of a joint magistrate's jurisdiction, have not been placed under his immediate authority by an order of government, in conformity with the above provision, the whole of the native officers composing those establishments continue under the control of the magistrate of the district. Application for leave by the officers of the thannas so situated, should be forwarded to the magistrate through the joint magistrate, to enable the latter to state any objections which he may have to offer against a compliance. Const. Nos. 210 and 232.

Invested with exclusive control in their local jurisdictions.

556. But by an order of government, dated January 6, 1825, it was directed that the joint magistrate should always possess exclusive control over the police establishments maintained in the local jurisdictions assigned to them. C. O. No. 306 of vol. 1.

GOVERNMENT ORDERS Nov. 1831 Residence.

557. Joint magistrates shall ordinarily reside at the sudder station of their principals. Government resolution, November 1st, 1831.

Subordinate to magistrate.

With full powers of magistrate unless interdicted.

558. *Rule* 4. A joint magistrate is in all respects subordinate to the magistrate, and is required to obey any orders the latter may see fit to issue. *Rule* 6. He is competent to exercise the full powers of a magistrate, unless interdicted from the exercise of such powers by his superior, who is of course at all times competent to limit, or extend, the jurisdiction of his subordinate. *Rule* 10. Whenever the joint magistrate is acting in subordination to his principal without any independent authority, all acts done

by him are held to be subject to his sole responsibility; but having undergone the revision of the magistrate are subject to their joint responsibility, and are appealable to the session judge. *Rule* 11. In like manner all acts done by the joint magistrate, when acting independently of his principal, rest on his own responsibility, and all appeals from such acts lie direct to the session judge. It is at all times competent to the magistrate to issue any general instructions, which he may deem necessary to his subordinate; and the subordinate officer, whenever he is officiating as magistrate, is to conform to all orders he may receive from him, provided of course that such principal is resident within the limits of the district. It is not necessary for the magistrate to make a report to the superintendent of police and session judge, for their respective consideration and orders, in cases, where the joint magistrate may exercise the full powers of the magistrate, except where he deems it necessary or expedient to divest himself altogether, for the time being, of magisterial duties; and in all such cases those officers are to report the circumstance to Government. *Rule* 12. It is also to be clearly understood that the magistrate is competent to resume at any time the duties, which he may have temporarily confided to the joint magistrate. *Rule* 13. In all instances in which a joint magistrate is officiating as magistrate, and receives general or specific instructions from his superior, he is to be held exempt from all responsibility which may attach to a punctual observance of such instructions. *Rule* 15. The superintendent of police is authorized, whenever he may think proper, to interfere with any arrangements in regard to matters of police made by the magistrates for the employment of joint magistrates or other assistants, or the distribution of business to be assigned to those functionaries; and the session judge may exercise the same power in all matters connected with the trial and decision of cases. Any interference of this nature will of course be exercised on the responsibility of the officer so interfering, and not without apparent necessity; and magistrates, after obeying the order, are allowed a reference to the Nizamut Adawlut or government, as the case may be. Government resolution, November 1st, 1831.

Responsibility, when not independent.

Appeal.

Responsibility when independent.

Appeal.

Subject to general instructions of magistrate.

Report of delegation of duties to, by magistrate.

Irresponsibility when acting under general instructions.

Power of session judge and superintendent of police to interfere in arrangements.

559. As under the above orders, joint magistrates are competent and required to exercise the full power of magistrate, unless interdicted from the exercise of such power by their superior; they are empowered to try appeals from the orders of sudder ameens in petty criminal cases. Const. No. 1231.

May try appeals from subordinates.

560. A joint magistrate is competent, under the 6th rule of the above resolutions, unless expressly interdicted by the magistrate, to commit prisoners to the sessions; and it is not necessary for the magistrate to revise his commitments: nor can the magistrate reverse an order of commitment made by a joint magistrate residing at the sudder station without independent jurisdiction. Const. Nos. 911 and 906.

Competent to make commitments to the sessions.

561. Under Act XXXI. 1841, all appeals from a joint magistrate, of whatever powers, are appealable exclusively to the session judge. Const. No. 1326.

Appeals from.

562. A magistrate may refer to a joint magistrate not holding independent jurisdiction, criminal cases for report; though, with reference to the respective powers of those officers, the measure should be resorted to as seldom as possible. Const. No. 1234.

Cases may be referred to, by magistrate for report.

SECTION XII.

OF THE FUNCTIONS OF THE ASSISTANT TO THE MAGISTRATE.

Oath.

563. Previous to an assistant's entering upon the exercise of judicial authority, he is to take and subscribe before the magistrate the following oath: —— "I, A. B., assistant to the magistrate of the zillah of ——, solemnly swear, that I will to the best of my ability assist the said magistrate in preserving the peace of the zillah over which his authority extends; that I will act with impartiality and integrity, and will not exact or receive, nor knowingly allow any other person to exact or receive, directly or indirectly, any fee, emolument, or reward whatsoever, in the execution of any matter relating to the duties of my office, excepting such as the orders of Government do or may expressly authorize; and that I will perform the duties of my office according to the best of my knowledge, abilities, and judgment, conformable to the regulations that have been or may be passed by the Governor General in Council. So help me GOD." *Beng.* and *Ben.* Reg. XIII. 1797. sect. 2. *Ced. Prov.* Reg. XII. 1803. sect. 17.

Must be taken on entering upon office, whether taken before in another district or not.

564. Under the above provisions, an assistant on removal from one district to another, whether under the orders of government or the commissioner of the division, should take the prescribed oath of office before the magistrate of the zillah to which he may have been newly appointed: and the magistrate is, in such cases competent, and indeed required by the above provisions, to administer it to him without any special orders from government on the subject. Const. No. 850.

Powers.

Judicial powers to be exercised by, the same as the (minor) powers of the magistrate.

565. An assistant, who has taken and subscribed the foregoing oath, is authorized to exercise the judicial powers vested in the magistrate by the established regulations, as far as may be necessary to enable him to perform the duties committed to him by the magistrate. *Beng.* and *Ben.* Reg. XIII. 1797. sect. 3. *Ced. Prov.* Reg. XII. 1803. sect. 18.

In the exercise of such powers, to be guided by the regulations enacted for the guidance of magistrates.

566. Assistants exercising judicial powers under the above provisions, are to be guided in every respect by Reg. IX. 1793, and such other regulations as have been or may be hereafter enacted for the guidance of magistrates, as far as the same may be applicable to their duties committed to them respectively. *Beng.* and *Ben.* Reg. XIII. 1797. sect. 4.(a)

(a) There appears to be no corresponding enactment for the Ceded Provinces.

567. But assistants are not, under the above provisions, to exercise the powers vested in the magistrates by sect. 19, Reg. IX. 1807. In the performance of any duties committed to them, they are not to exceed the powers vested in them by the regulations heretofore in force, except that, in the cases provided for by sect. 8, Reg. IX. 1793 (*Ced. Prov.* sect. 8, Reg. VI. 1803), wherein it may appear proper to impose the fine thereby authorized, in addition to 15 days' imprisonment, both the stated fine and the imprisonment may be adjudged, with an eventual commutation of the fine, if not paid, to further confinement for a period of 15 days, making the entire term of imprisonment, if the fine be not paid, one month of 30 days. In like manner, in charges of petty thefts, provided for by sect. 9, Reg. IX. 1793 (*Ced. Prov.* sect. 9, Reg. VI. 1803), they may, if it appear just and requisite, adjudge the one month's imprisonment in addition to the corporal punishment. In any case wherein the offence proved against the prisoner appears to require a more severe punishment than he is hereby authorized to adjudge, he is not to pass any sentence, but is to submit his proceedings to the magistrate, who, after holding any further proceedings he may deem necessary, if satisfied of the guilt of the prisoner, is to pass sentence on, or to commit or hold him to bail for trial, before the sessions, according to the nature and circumstances of the case. Reg. IX. 1807. sect. 20.

But may not exercise the higher powers of magistrate.

Powers limited to 15 days' imprisonment and 50 rupees fine, or additional 15 days;

and in cases of theft to one month's imprisonment in addition to corporal punishment.

SPECIAL POWERS.

Application.

568. Applications for vesting assistants with special powers are to be sent to the Nizamut Adawlut, and not to the superintendent of police. C. O. Sup. Pol. L. P. No. 29 of 1844.

May be conferred on assistant duly qualified.

569. When the Nizamut Adawlut are of opinion, either from a report of the magistrate or from other information, that an assistant is duly qualified by his experience, industry, and abilities, to be entrusted with special powers, they are to report to government. On the receipt of such report, or on other information, the government may invest such assistant with the special powers described below. Reg. III. 1821. sect. 2, cl. 1 and 2.

Not exceeding 6 months' imprisonment, and corporal punishment, or fine of 200 rupees commutable to additional 6 months.

570. Assistants may be especially empowered, in all cases referred to them in which an individual may be convicted of any criminal offence punishable under the Mahomedan law and the regulations,—for which the penalties authorized above appear insufficient, and for which a more severe punishment than six months' imprisonment with thirty ratans, or a fine of two hundred rupees, has not been specifically prescribed,—to pass sentence of imprisonment not exceeding 6 months, with corporal punishment in cases in which corporal punishment is authorized by the regulations, or in other cases with a fine not exceeding 200 rupees, commutable, if not paid, to a further period of imprisonment not exceeding 6 months, so that the entire period of imprisonment in no instance exceeds one year. Reg. III. 1821. sect. 2, cl. 3.

If more severe punishment required, case to be submitted to magistrate.

571. If the offence proved against the prisoner appears to require a more severe punishment than the foregoing, he is not to pass any sentence, but is to submit his proceedings to the magistrate, who, after holding any further proceedings he may deem necessary, if satisfied of the guilt of the prisoner, is to pass sentence on, or to commit or hold him to bail for trial before the sessions, according to the nature and circumstances of the case. Reg. III. 1821. sect. 2, cl. 4.

No power to make commitment;

572. An assistant is not competent to pass an order for commitment in cases wherein the offence appears to require a more severe punishment, than he is competent to adjudge; but he must submit his proceedings to the magistrate. Const. No. 191.

even when in charge of office.

573. An assistant is not competent to make commitments to the sessions, unless he has been appointed by government to act as magistrate: consequently an assistant directed to take charge of the office at the sudder station during the absence of the magistrate in the interior cannot exercise that power. Const. No. 686.

Cannot take cognizance of charges against Europeans.

574. An assistant is not competent to take cognizance of complaints against European British subjects to the extent specified in 53d Geo. III. cap. 155, sect. 105. The powers in question can be exercised only by a person possessing the full powers of magistrate. Const. No. 595.

Special powers do not descend to successor; and government may revoke.

575. Upon the death, removal, or resignation of any assistant invested with special powers, the person succeeding to the office of assistant is in no case entitled to exercise such special powers without the previous sanction of government; and it is at all times competent to government to revoke the special powers, entrusted to an assistant, for any cause which, in the opinion of government, may render the adoption of that measure expedient. Reg. III. 1821. sect. 2, cl. 7.

Duties.

To perform ministerial acts prescribed by magistrate;

576. Assistants are to perform all such ministerial acts as may be prescribed to them by the magistrates, consistently with the regulations; but are in no cases to exercise judicial powers except in cases in which they are expressly authorized to exercise such powers by the regulations. *Beng.* and *Ben.* Reg. IV. 1796. sect. 6. *Ced. Prov.* Reg. XII. 1803. sect. 16.

and such part of the duties, as magistate may make over,

577. Magistrates are authorized to employ their assistants in the execution of such part of their prescribed duties as, from the extent of their general business, or other cause, they are unable to give due attention to themselves. *Beng.* and *Ben.* Reg. XIII. 1797. sect. 2. *Ced. Prov.* Reg. XII. 1803. sect. 17.

Magistrate's order of reference to be recorded on his proceedings, with instructions.

578. Whenever a complaint or charge of a criminal nature is referred by a magistrate to his assistant for examination, under the foregoing provisions, the order of reference is to be recorded on the magistrate's proceedings with instructions, whether to submit the proceedings held upon the examination for the magistrate's decision, or whether the determination upon the charge is to be passed by the assistant, if it be such as he is authorized to determine, under the regulations. As far as the general duties of the magistrates may admit, they are directed to examine the proceedings held by their assistants in such cases.(a) Reg. IX. 1807. sect. 21.

579. The same rule is applicable to cases referred to assistants vested with special powers. Reg. III. 1821. sect. 2, cl. 5.

Power in cases referred for decision, and report.

580. In cases referred to an assistant for trial and decision, he may acquit or convict according to his judgment. But in cases referred merely for report, he has no power to release the prisoners, but should submit his opinion in the required report to the magistrate, who will pass the proper order. Const. No. 612.

Magistrate may recal cases referred.

581. Magistrates are authorized at all times to recal from their assistants any depending cases, which may have been referred to them under the above provisions, and which for

(a) For rules regarding the power of magistrate to revise the orders of his assistant, see chapter 5 of this book.

the more speedy administration of justice, or for any other reason, the magistrates may deem it proper to determine themselves in the first instance. Reg. III. 1821. sect. 2, cl. 6.

Head assistants.

582. Where head assistants to magistrates are appointed, it is sufficient to declare that they are to perform all acts which may be required of them by the magistrate; and that they are in like manner to obey the joint magistrates, when the latter are acting independently. Government resolution, November 1, 1831, para. 14.

Assistants guilty of neglect or misconduct.

583. Session judges and magistrates, are enjoined to report to the Nizamut Adawlut, whenever the ministerial officers attached to their courts, who are covenanted servants of the Company, are guilty of neglect or misconduct (other than corruption or extortion) in the discharge of their duty. *Beng.* Reg. XIII. 1793. sect. 10. *Ced. Prov.* Reg. XII. 1803. sect. 13.

584. In such cases the Nizamut Adawlut is to be guided by the same rules as in the case of magistrates guilty of neglect or misconduct; see para. 502.

SECTION XIII.

OF THE FUNCTIONS OF THE DEPUTY MAGISTRATE.

Power to appoint.

585. It is competent to the local governments of both divisions of the Bengal Presidency to appoint in any zillah or district one or more uncovenanted deputy magistrates with the powers hereinafter specified. Act XV. 1843. sect. 1.

Declaration to be made and subscribed.

586. Every person appointed to the office of deputy magistrate under this Act, previously to entering upon the execution of the duties of his office, is to make and subscribe before the magistrate of the district to which he is appointed, a declaration according to Act XXI. 1837.(a) Act XV. 1843. sect. 2.

May be employed as a judicial or police officer.

As judicial officer, powers,

and appeals from.

As a police officer in all respects subordinate to magistrate.

587. A deputy magistrate, appointed under this Act, is capable of being employed as a judicial officer, or as an officer of police, or both, at the discretion of the local government. As a judicial officer he is to exercise the powers of a covenanted assistant under Regulations XIII. 1797, IX. 1807, or III. 1821, or the full powers of a magistrate, according to such orders as may from time to time be issued in that respect by the local government; and in such cases he is subject to such authority in regard to appeals from his decisions and judicial orders as is provided for the decisions and orders of a covenanted assistant under the above regulations, or of a magistrate respectively. As an officer of police he is in all respects subordinate to the magistrate under whom he is placed; he is to exercise such powers as the government, or the magistrate with the sanction of government, commits to him; and is to obey all orders

(a) The purport of Act XXI. 1837, is to make it lawful for government to substitute a declaration for any oath required to be taken by law. The deputy magistrate must be required to make and subscribe a declaration to the same effect as the oath administered to covenanted assistants.

that are issued, and perform all duties assigned to him by that functionary, who is at all times competent, subject to such orders as he receives from the local government, to extend, limit, or resume the powers committed to such deputy. Act XV. 1843. sect. 3.

Commitment.

588. Officers invested with the full powers of magistrate are competent to make commitments to the sessions in cases referred to them, which are beyond their competency to decide. C. O. No. 173 of vol. 3.

Office may be held conjointly with other office.

589. Uncovenanted officers in the revenue and judicial departments may hold at the same time with any other office the office of deputy magistrate. Act XV. 1843. sect. 4.

Dismissal.

590. A deputy magistrate is not to be dismissed from office for misconduct without the sanction of the local government. Whenever there is reason to believe that a deputy magistrate is disqualified by neglect, incapacity, or corruption, for continuance in office, a report is to be submitted by the magistrate for the consideration and orders of government, which is competent to suspend him, and order a further enquiry into his conduct, or to direct his immediate dismissal, as may appear just and proper. Act XV. 1843. sect. 5.

SECTION XIV.

RULES FOR THE GUIDANCE OF DEPUTY MAGISTRATES AND ASSISTANTS IN CHARGE OF SUB-DIVISIONS.

By Government Orders, February 18, 1846.

If with full powers of magistrate.

Reports, petitions and cases.

591. *Rule* 1. After assuming charge of their sub-divisions, deputy magistrates and assistants will hear and pass orders on all reports which may be submitted by the police, receiving petitions from the inhabitants within their jurisdiction, and deciding, or committing all cases brought before them, excepting such as the magistrates may think proper to call for and decide themselves. As the deputies and assistants will have been vested with the full powers of a magistrate, it is unnecessary to lay down any special rules for their guidance as judicial officers. It will be sufficient to enjoin upon them a strict adherence to the Government regulations and the rules and orders of the court of Sudder Nizamut and of the superintendent of police lower provinces.

To avoid detention of parties, to make themselves accessible, and to move about the district.

592. *Rule* 2. As the great object of stationing officers in the interior of districts is to relieve the inhabitants within their divisions from the delays and inconveniences to which they are now subject in their applications to station courts; and 2ndly, to secure a more effectual control, than has hitherto been possible, over the police employed in distant thannas, the deputies and assistants are particularly enjoined to avoid all unnecessary detention of parties in suits before them, to render themselves freely accessible to people of all classes, to listen to their communications with temper and consideration, and during the dry weather to be as much as possible upon the move, visiting the thannas under them, investigating serious

offences on the spot where they occur, acquiring every possible information from every available source, as to the characters of the police officers and the landholders, or middlemen, of the sub-division, ferreting out receivers of stolen property and such parties as make a practice of harbouring robbers, and generally (after consultation, if necessary, with the magistrate) taking such measures as may appear most advisable for the suppression of crime and the maintenance of peace and good order.

and to take measures of police for the maintenance of good order in the district.

593. *Rule* 3. On the occurrence of any heinous offence, they will report the circumstances to the magistrate either in English, or in the vernacular, as they may find most convenient, and will keep that officer weekly informed of the progress and result of their proceedings for the apprehension and conviction of the parties concerned, paying due regard to any instructions which they may receive from him. The magistrate will forward copies of these reports to the superintendent of police lower provinces, with as little delay as possible.

On the occurrence of a heinous offence.

594. *Rule* 4. In cases of murder, homicide, or unnatural death, accompanied with suspicious circumstances; as also in cases of severe wounding, the corpse, or wounded person, will be forwarded by the police, as soon as the customary sooruthal has been recorded, to the officer in charge of the sub-division, should his station be in the direct line between the place where the investigation is going on and the sudder station of the magistrate The deputy, or assistant, after inspecting the corpse, or wounded person, as the case may be, will loose no time in sending the same on to the sudder station for examination by the civil surgeon. But, should the deputy or assistant be absent from the subordinate station when the corpse or wounded person arrives there, or should his station be out of the direct line, the corpse, or wounded person, shall be forwarded on to the sudder station without awaiting the return of the above officer. The civil surgeon's report will be addressed to the officer in charge of the sub-division who, whenever such may be necessary, will request the magistrate at the sudder station to take the deposition of the medical officer and furnish him with a copy thereof, in order to enable him to judge as to the propriety of making further enquiries, and to assist him in drawing up the calendar of commitment.

In a case of violent or unnatural death.

595. *Rule* 5. Deputies, subordinate to two or more magistrates, will use their own discretion, as to priority in the execution of orders simultaneously received from different superiors.

If subordinate to two magistrates.

596. *Rule* 6. The deputy magistrates will invariably correspond with the superior authorities through the magistrates to whom they are subordinate, except in cases of emergency, where delay would be mischievous, or highly inconvenient.

Correspondence with superior authorities.

597. *Rule* 7. The monthly statements of work disposed of and pending must be despatched by the deputy magistrates and assistants on or before the 5th of each month, and the yearly statements not later than the 10th of January. On each monthly statement the subordinate officers will make a note of the number of times, during the month, on which they have proceeded on duty into the interior and the number of days they have on that account been absent from their stations.

Statements.

Disposal of prisoners sentenced to simple imprisonment for one month;

598. *Rule* 8. Such parties as the deputies or assistants may sentence to simple imprisonment, not exceeding one month, will be retained in custody in the place set apart for such parties at the head quarters of the sub-division.

exceeding one month; or for any period with labor.

599. *Rule* 9. Prisoners whose sentences may exceed one month, together with all prisoners sentenced to hard labor, and prisoners committed to the sessions, should be forwarded to the sudder station under a guard of burkundauzes, as often as may be practicable; but never less seldom than once a week, and care should be taken to transmit along with them, their warrants and the calendars of commitment, together with such other papers, as may be necessary. The term of imprisonment of prisoners sent to the sudder station will be calculated from the date of sentence.

Money received as fines, deposits, &c.

600. *Rule* 10. By the same opportunity the subordinate officers will remit such sums as they may have received on account of fines, deposits, sale of unclaimed property, &c. transmitting along with them copies of their weekly cash account, which must give clearly the different heads of receipts. Deposits on account of diet money of witnesses need not be remitted to the sudder station, the unexpended balances of the same being re-payable, according to law, on the decision of each case, to the depositors.

Refunds.

601. *Rule* 11. All refunds of fines, deposits, (with the above exception,) &c., will be made from the magistrate's treasury, on receipt of a roobukaree from the deputy magistrates, or assistants, who are strictly prohibited from making any refunds themselves, or any disbursements, except such as may have been sanctioned by the magistrate, or the superior authorities.

Records to be kept at sudder station.

602. *Rule* 12. The records of such cases, as may have been finally disposed of, should be forwarded to the magistrate's office on the 1st January of each year, arranged in bundles according to the thana and the nature of the offence, and accompanied by a clearly arranged catalogue.

Dismissal of amlah, or police darogah, mohurrir, or jemadar.

603. *Rule* 13. Should the deputy magistrates, or assistants see reason to believe that any one of their amlah, or any darogah, mohurrir, or jemadar, has been guilty of misconduct, or is otherwise incapacitated, so as to render necessary his removal from office, they will report the circumstances through the magistrate to the superintendent of police, and forward the papers of the case, together with their opinion for final orders, suspending such officer on their own responsibility, should such a measure appear advisable.(*a*)

Dismissal and appointment of burkundauzes, chowkeedars, and goraits.

604. *Rule* 14. The dismissal of burkundauzes, chowkeedars and goraits, as also the appointment of burkundauzes, and the confirmation of chowkeedars and goraits nominated by the zemindars, rests entirely with the deputy magistrates or assistants, subject, of course, to an appeal in the case of the former to the superintendent of police, and in that of the latter to the magistrate. The assistants or deputies will, however, furnish the magistrate with a monthly statement of burkundauzes, chowkeedars, and goraits dismissed by them, specifying

Statement of such.

(*a*) In case of dismissal the following particulars must be forwarded to the magistrate for report to the superintendent of police in accordance with his C. O. No. 10 of 1842, viz. 1. Name of dismissed officer; 2. Name of his father, and place of birth; 3. Office held by him; 4. Cause of dismissal; 5. Description of person, noticing peculiarities of speech, form, or feature; 6. Remarks.

in each instance the nature of the offence. Should his offence be such as to render the re-employment of any burkundauz improper, the deputies or assistants will forward the papers through the magistrate to the superintendent of police, for the necessary orders.

605. *Rule* 15. A similar statement of police officers punished by fine or suspension from office will accompany the above.

Statement of police officers punished.

606. *Rule* 16. The deputy magistrates, or assistants, will be careful to issue no "dustoor-ul-ummul," or circular orders of a general nature to the police, without the approval of the magistrate and the superintendent of police.

Circular orders.

607. *Rule* 17. On a vacancy occurring in the ministerial establishment, or in any of the higher grades of the police (thanadar, mohurrir, or jemadar) the deputy magistrates, or assistants, will nominate the candidate whom they may think most capable, giving the preference on all occasions to subordinates, who may in any way have distinguished themselves. They will then take the deposition of their nominee in open cutcherry, as to his residence, former employment, with dates, fact of removal from any appointment, with cause thereof, relationship or connection with any residents in the division, or with any of the amlah in the district offices. This statement the deputies, or assistants, will forward with their nomination in the ordinary form, for the approval of the magistrate and the superintendent of police.

Appointment of ministerial officers, and police thanadars, mohurrirs, and jemadars.

608. *Rule* 18. The deputies or assistants will keep in their office at all times ready for the magistrate's inspection, the following books and registers, in English and the vernacular, the headings of which are to be furnished to them from the magistrate's office.

REGISTERS AND BOOKS.

Register of hajut and bail cases pending.[1] *Register of miscellaneous and burawurda ditto.*[2] *Register of Act IV. of* 1840 *cases ditto.*[3] The deputies will take care, that the cases are entered in these on the day of their institution, and they will write the decision at the time of its delivery in their own hand.

ENGLISH AND VERNACULAR.

Registers of cases pending.

[1] *Appendix B, No.* 7.
[2] *Ibid, No.* 12.
[3] *Ibid, No.* 11.

Register of fines.[4] This they will keep open on their table, and will enter the fines, as they pronounce the order. They will take care that all fines are paid in their own presence, and will enter the receipt at the moment under the proper heading. In forwarding to the station prisoners, who may be sentenced to imprisonment with fine in lieu of labor, or in lieu of an additional term of imprisonment, the deputies will always send with them an abstract from the fine book, in order that these fines, which will then be payable at the sudder station, may be duly entered in the books of the magistrate's office.

Register of fines.

[4] *Appendix B, No.* 26.

Book of police officers' good conduct;[5] *and separate book of bad conduct.*[6] In these books the deputies will note every occasion on which a police officer may distinguish himself; and every instance in which he may be fined, suspended, or reprimanded.

Books of police officers' conduct

[5] *Appendix B, No.* 17.
[6] *Ibid, No.* 18.

Book of daily receipts and disbursements.[7] This book must never be allowed to fall into arrears, and from this will be made out the weekly cash accounts for transmission to the magistrate.

Daily account current.

[7] *v. Appendix B, No.* 27.

Register of persons who have eluded the pursuit of justice;[8] *and register of persons who have broken jail.*[9] These books must be carefully kept, and measures should be taken by the deputies every now and then to ascertain whether the parties have returned to their houses, or to what part of the country they have made their escape. Notice of the escape of these

Registers of furarees.

[8] *Appendix B, No.* 2.
[9] *Ibid, No.* 1.

parties must always be given to the magistrate of the district, in order that the names of the fugitives may be entered in the books of his office.

Also a book of calendars of commitment.

VERNACULAR.

And the following books and registers in the vernacular.

1 *Book of perwannahs.*

1 *Ditto of summons and dustucks, &c.*

[1] *v. Appendix B, No. 4.*

1 *Register of petitions.*[1]

[2] *Ibid, No. 5.*

1 *Ditto of thana reports.*[2]

1 *Copy book of roobukarees.*

[3] *Ibid, No. 22*

4 *Record-keeper's registers of cases according to Mr. Robinson's plan.*[3]

[4] *Ibid, No 13.*

1 *Daily register of parties in attendance according to the orders of Sudder Nizamut.*[4]

[5] *Ibid, No. 29.*

1 *Register of subsistence money deposited by parties to suits.*[5]

[6] *Ibid, No. 28.*

1 *Register of subsistence money paid to witnesses by Government.*[6] This money the deputies or assistants will invariably see paid in their own presence, and will send a detailed statement of sums paid to each witness, on account of government, to the magistrate, monthly, i. e. on the 1st of each month, in order that it may be included in the contingent bills of the office. Occasional sums of money, not exceeding 100 rupees at a time, will be sent to the deputies by the magistrates, to enable them to make these disbursements, which, however, if the sudder court's orders for the prompt disposal of cases are properly acted up to, ought to be of rare occurrence.

Registers of unclaimed and other property.

[7] *v. Appendix B, No. 14.*

[8] *Ibid, No. 15.*

Two registers of unclaimed[7] *and lawaris property.*[8] In these the deputies or assistants will include all property, which may be forwarded to their court, whether stolen, suspicious, unclaimed, or left by persons dying intestate. The latter kind of property will be forwarded weekly through the magistrate to the civil court.

Register of chowkeedars.

[9] *v. Appendix B, No. 19.*

A register of chowkeedars.[9] This register must be very carefully kept up—the removal of a chowkeedar and the name of his successor being noted as soon after the order is given as possible. The deputies or assistants will take every opportunity also, on visiting their thanas, of assembling the chowkeedars, and testing its correctness—weeding the force at the same time of all men, who may appear incapable of the active performance of their duties, and ascertaining that the whole have been regularly paid.

Book of prisoners' rations.

[10] *v. Appendix B, No. 30.*

Book of prisoners' rations.[10] The rations of the prisoners and persons under trial in "hajut tujveez" will be furnished, whenever practicable, by the jail moodee, who will keep an agent at the out-station for this purpose, and will receive payment from the magistrate's treasury on production of the deputy's vouchers, specifying the daily number of prisoners in confinement. These vouchers may be in the vernacular, but the deputies will superscribe them in their own handwriting with the number of prisoners, and will attach their initials thereto. On the 1st of each month they will forward a list in the vernacular of prisoners in confinement on each day of the month, for comparison with the vouchers.

Memo: of present state of prisoners.

At the same time, the deputies will furnish the magistrates with a memorandum in the vernacular, shewing the number of prisoners in confinement, or in transit on the last day of the preceding month, as also the number of escapes and deaths. These memoranda will be

entered by the magistrates at the foot of their monthly statements of prisoners and casualties, forwarded to government.

609. *Rule* 19. Officers exercising the above powers at out-stations, will hear and pass orders on all reports from the thana under them, and dispose of all cases occurring in their jurisdiction and within their competence to decide. All cases of a heinous nature, such as murder, dacoity, aggravated burglary, or serious affray, must be immediately reported to the magistrate, but the subordinate officers will at the same time pass such orders, as may be necessary, and proceed themselves to the scene of the crime when practicable, for the purpose of carrying on the requisite inquiries, without waiting the magistrate's instructions. On receiving these latter, they will of course be guided accordingly.

If with special powers.

Reports and petty cases.

Heinous offences.

610. *Rule* 20. The subordinate officers will proceed to take evidence in all cases of felony, or misdemeanor, which though beyond their competence to decide, may be unattended with aggravating circumstances; such as simple theft of property exceeding 50 rupees in value, simple burglary, and the like. Where the subordinate officers may consider the charges not proved, they will dismiss the parties, with the exception of defendants, whom they will retain on bail, until the receipt of the magistrate's orders for the discharge of the defendants, or for their transmission to be tried before him. Where the subordinate officers may consider the charges proved, they will at once forward the prisoner, together with the papers, to their superiors. The latter arrangement will also apply to prisoners triable under Act III. of 1844, and who can only be sentenced to suffer corporal punishment by an officer exercising the powers of a magistrate.(a)

Minor offences beyond their competence.

SECTION XV.

OF THE FUNCTIONS OF THE LAW OFFICER AND NATIVE JUDGES.

611. The magistrates are authorized to refer for trial to the Hindoo and Mahomedan law officers, all complaints or charges brought before them for petty offences, such as abusive language, calumny, inconsiderable assaults or affrays, and all charges of petty thefts, when unattended with any aggravating circumstances. Reg. III. 1821. sect. 3, cl. 1.

Magistrate may refer certain cases,

612. Magistrates are competent to refer to the law officers any criminal cases, which they are authorized by former regulations to refer to their assistants; and in the mode of making the reference, and in the subsequent stages of the proceeding, the magistrates and law officers are to be guided by the provisions hitherto in force relative to such cases. Reg. III. 1821. sect. 3, cl. 2.

the same which they can refer to assistants.

(a) These rules have been issued by the government of Bengal, and of course apply to assistants and deputies only in the lower provinces. But I presume that orders of the same nature have been circulated in the western provinces

Powers in trivial cases,

613. The law officers, in the decision of criminal cases so referred to them, are authorized to exercise the same powers as those vested in the assistants to the magistrates by sect. 20, Reg. IX. 1807, and by the other regulations therein referred to; that is, they are not to sentence a person convicted of abusive language, or calumny, or inconsiderable assault or affray, to a more severe sentence than 15 days' imprisonment, and a fine of 50 rupees with an eventual commutation, if the fine be not paid, to further confinement for 15 days more, making the entire term of imprisonment, if the fine be not paid, one month of 30 days. Nor are they to sentence a person convicted of petty theft to a more severe sentence than corporal punishment and imprisonment for a period of one month. Persons sentenced to imprisonment by the law officers are not to be confined in irons or in fetters, except in cases in which the misconduct of such individual, during his imprisonment appears to the magistrate to render such measure necessary for his safe custody. Reg. III. 1821. sect. 3, cl. 3.

and in cases of petty theft.

May not impose fetters.

But may sentence to labor in cases of theft.

614. In all cases of petty theft, they may sentence persons convicted before them to labor, in addition to the above sentence. Reg. II. 1832. section 3.

Monthly statements.

615. The law officers are to forward to the magistrates, on the fifth day of each month, a statement showing the manner in which the cases referred to them may have been disposed of, in order that the same, after having been carefully inspected by the magistrates, with the view of noticing and eventually correcting any irregularities, may be incorporated in the periodical reports required to be submitted to the superior courts. Reg. III. 1821. sect. 3, cl. 4.

Sudder ameens.

616. The foregoing provisions are applicable to sudder ameens.(a) Reg. III. 1821. sect. 4.

And principal sudder ameens.

617. The above rules are applicable to principal sudder ameens; and it is competent to the magistrate to refer to a sudder ameen, or principal sudder ameen, not being a Mahomedan law officer, any criminal case for investigation, though such case is not finally cognizable by such sudder ameen; provided however that no commitment be made by those officers, and that their power of awarding punishment in criminal matters, under the existing regulations, be not exceeded. Reg. V. 1831. sect. 18, cl. 6.

Cases may be referred to them for report;

but not to a law officer, who can only try cases finally cognizable by himself; and should return more serious cases.

618. The above provision in no way affects the rules of Reg. III. 1821. The Mahomedan law officer has still the power of trying cases finally cognizable by him, which may be referred to him. C. O. No. 133 of vol. 2.

619. The powers of the law officers are confined to the trial and decision of trivial cases; and cannot be construed as conveying to them authority to investigate and report upon any description of cases which they are not ultimately competent to decide. Should a case, apparently trivial, turn out upon investigation to be of a serious nature, it would be necessary for the law officer, to whom it had been sent for trial and decision, to return it to the magistrate, unaccompanied however by any opinion as to the merits of the case. C. O. No. 30 of vol. 2; and Const. No. 516.

(a) The application of these provisions is restricted in the text to sudder ameens vested with certain special powers under sect. 5, Reg. II. 1821; but all sudder ameens have now greater powers than those specified.

620. An injudicious employment of the Mahomedan law officers in trying criminal cases, may involve the anomaly of the same individual being required to sit as an assessor, in cases in which he has already conducted the primary inquiry, and has consequently prejudged the subject to be decided. To avoid such incongruity a magistrate should make over to those officers such cases only, as may, on a cursory examination, appear to him not likely to be ultimately referred to the sessions court. C. O. No. 236 of vol. 2.

Cases which may ultimately be brought before the sessions should not be referred to law officer.

621. All cases under the provisions of Reg. VII. 1819, are referrible to principal sudder ameens for investigation and report. Const. No. 1265.

Cases under Reg. VII. 1819 may be referred.

622. In cases referred for investigation and decision to sudder ameens by the magistrate, they have no authority to issue perwanahs to thanadars, darogahs, or other mofussil police officers; when necessity exists they are to represent the matter to the magistrate who will issue the necessary orders. Const. No. 451.

How such officers are to issue orders to police;

623. The processes of sudder ameens, in criminal cases referred to them, should be issued under their own signatures, but under the seal and through the officers of the magistrate. Const. No. 741.

and processes.

SECTION XVI.

OF THE SUPERINTENDENT OF POLICE IN THE CAMP OF THE GOVERNOR GENERAL.

624. As often as the Governor General of India, or the Commander-in-Chief of all the forces in India, or the Lieutenant Governor of the North Western Provinces, shall pass through any part of the territories of the East India Company attended by a camp, it shall be lawful for the Governor General in Council, or by an order in Council, to appoint a superintendent of police of such camp. Act XXVI. 1836. sect. 1.

Appointment.

625. With respect to all offences committed in any such camp, or on the line of march between the stations of any such camp, such superintendent shall have concurrent criminal jurisdiction with the magistrate of the zillah or city, within which such offence shall have been committed. Act XXVI. 1836. sect. 2.

Jurisdiction.

626. As often as the said superintendent shall, by virtue of such powers, commit any person for trial before the sessions court, or sentence any person to imprisonment, it shall be lawful for him to transmit such person to the magistrate of the zillah or city where the camp shall then be, with a copy of the commitment or sentence under his hand, and the magistrate shall give effect to such commitment or sentence. Act XXVI. 1836. sect. 3.

Prisoners committed or sentenced are to be sent to the magistrate.

All officers subordinate to magistrate are to assist.

627. All officers subordinate to the magistrate of the zillah or city, where such camp shall be, are to be assisting to the superintendent in the exercise of the powers conferred on him by this Act, in the same manner as they are bound to be assisting to the magistrate. Act XXVI. 1836. sect. 4.

Appeals from.

628. Appeals from decisions and orders of such superintendent are cognizable by a session judge, in the same manner and under the same restrictions as appeals from the decisions and orders of a magistrate, or other officer empowered to try criminal cases, are admissible. Const. No. 1370.

SECTION XVII.

OF COMMITMENTS.

Power to commit.

629. All officers invested with the full powers of magistrate, are competent to make commitments to the sessions in cases referred to them, which may be beyond their competency to decide. C. O. No. 173 of vol. 3.

Joint magistrate.

630. An order for commitment made by a joint magistrate residing at the sudder station without independent authority, is not liable to reversal by the magistrate of the district: this can only be done by the session judge. All joint magistrates without independent jurisdiction are competent to make commitments, unless expressly interdicted by the magistrate (under rule 6 of the resolution of government dated November 1st 1831);* and it is not necessary for the magistrate to revise their commitments. Const. Nos. 906 and 911.

* *v.* ¶ 558.

How far the judge is competent to order the commitment of a person released by the magistrate.

631. It was ruled by government on the 7th July 1835 (under Act VII. 1835), that all session judges, or other officers exercising the powers of session judges, are competent to order a magistrate to commit any person or persons (connected with a trial pending before them), whom the magistrate has not thought fit, or objects, to bring to trial. [C. O. No. 175 of vol. 2, and Const. No. 986.] But after the passing of Act XXXI. 1841, it became a question how far the sessions judge is competent, under the terms of that law, to direct the apprehension, with a view to commitment for trial, of a person, the charge against whom has, either with or without the arrest of the party, been investigated and dismissed by the magistrate, on the ground of the insufficiency of the proof against him, or from other cause; in cases which would, if proceeded with, be respectively within or beyond the magistrate's power to dispose of on trial by a final order. In cases of the former description, viz. those which the magistrate can decide of his own authority, it is agreed that the order of that officer for dismissal of the charge must be viewed as a legal acquittal; and cannot, in any view, be considered tangible by the sessions court. But as regards cases beyond the magistrate's competency to try, there is a difference of opinion; the Calcutta Court decides that the sessions court has no power of interference; while the Western Court allows such power,

but requires the session judges to exercise it with caution and discretion, and never to subject to commitment and trial, without good grounds, a person in such case released by the magistrate. C. O. No. 123 of vol. 3.

Person once tried and acquitted, cannot be again committed on the same charge.

632. A magistrate may not commit, for a second trial before the sessions court, any person already tried and acquitted on the same charge by a competent tribunal, whether the court of sessions or Nizamut Adawlut. But this does not preclude the magistrates from committing for trial before the sessions, in cases cognizable by that court, persons who have been before apprehended and discharged by a magistrate from want of evidence, if further evidence in support of the charge should appear to warrant the measure. C. O. No. 177 of vol. 1.

A prisoner charged with one offence may be recommitted on another, appearing in the evidence on trial.

633. A prisoner tried before the sessions court for one offence and acquitted thereof, may be again committed by order of the court for another crime, of which from the evidence produced before the court he appears to have been guilty. Thus a prisoner was acquitted of being an accomplice in murder, but was directed to be brought to trial for having received part of the property of which the deceased was robbed. N. A. R. vol. 4, page 32.

Witnesses on trial implicating themselves in the offence charged may be committed on such charge.

634. It appearing from the evidence of certain witnesses in the course of a trial before the court of circuit, that they were concerned in the act with which the prisoners stood charged, the court directed the judge of circuit to consider the proceedings on the trial held before him, and on which his reference was founded, as incomplete; and ordered a further investigation of the case at the ensuing sessions, the charge being drawn up as well against these witnesses as against the prisoners first indicted, to whom leave was given to make a supplementary defence. It was also ordered that if no evidence could be found against these fresh prisoners, except that furnished by their own depositions on oath, some of the least guilty among them were to be offered a free pardon, on the condition of their disclosing all the circumstances of the case, which might have come within their knowledge. N. A. R. vol. 2, page 14.

In a case of perjury in the sessions court, judge may direct magistrate to commit, and himself try the case.

635. Whenever a witness, giving evidence before a sessions court, is considered by the judge to be guilty of wilful perjury, or whenever a person attending a sessions court is considered by the judge to be guilty of subornation of perjury, or of forgery, in any trial or matter depending before the court, and the whole of the witnesses required for the proof of the charge, and for the defence of the accused, are also in attendance, the judge is competent to direct the magistrate to commit the person so charged for immediate(a) trial before the sessions court. But this does not authorize the conviction or punishment of any person, charged with the crimes specified, until he has been regularly put upon his trial; or until any material evidence which he may have to offer in his defence has been received, and duly considered. Reg. II. 1807. sect. 6.

636. Under the above rule, a session judge is at liberty to direct the magistrate to commit the offenders for trial, and immediately to proceed to the trial of the case himself. C. O. No. 169 of vol. 2.

(a) That is, as explained in the original, "instead of postponing the commitment for trial at the ensuing session of the court of circuit."

In a case of perjury in the civil court, the civil judge *must* commit; but cannot try.

* *See chapter on perjury in book 7.*

637. In cases of perjury,* or subornation of perjury, in the civil courts, the commitment must, according to cl. 2, sect. 14, Reg. XVII. 1817, be made by the judge; who is, at the same time to determine whether the persons charged are to be admitted to bail or kept in custody; the duty of the magistrate being confined to causing the attendance of the parties or witnesses before the court by whom the case is to be tried. When the civil judge has made a commitment, he cannot try it in his capacity of session judge. (a) C. O. No. 169 of vol. 2; and C. O. No. 4, March 13th 1846, see Bengalee Gazette, page 408.

Commitment for perjury cannot be made by the magistrate, except at the instance of court in which it was committed;

638. A prisoner, having admitted before the moulvee (in a criminal case referred to him by the magistrate) that he had perjured himself in the civil court, was sent by the moulvee to the magistrate, and was committed by the latter officer to stand his trial for perjury. It was held that this proceeding was irregular, and that the commitment should have been made at the instance of the court in which the perjury was committed. N. A. R. vol. 2, page 208.

without which proceedings are illegal.

639. A commitment by a magistrate for forgery and perjury in a civil suit without reference from the civil court, was declared to be illegal, and the whole of the proceedings null and void. N. A. R. vol. 3, pages 203, and 290.

Judge may not himself commit a moonsiff charged with corruption, &c.

640. In the case of a moonsiff charged with corruption, or other misdemeanor, the judge should confine himself to a preliminary enquiry, and should then, if he see fit, direct the government pleader to prefer a charge of corruption against the prisoner before the magistrate. N. A. R. vol. 5, page 151. Const. No. 1069.

Civil judge can commit only in cases of perjury and forgery.

641. A civil judge is not competent to commit a person charged with embezzlement, or or any other crime than perjury or forgery. In all other cases connected with the proceedings of a civil court [such as — a charge of presenting or filing a petition with the fraudulent intent of obtaining money already paid (Const. No. 925) —— or of fraud (Const. No. 1225)] if grounds appear to exist for subjecting the accused to a criminal trial, he should forward the proceedings to the magistrate, directing the government pleader to prosecute the case. The magistrate however in committing or releasing the person charged with the offence, will act on his own judgment on a fair consideration of the evidence adduced. Const. Nos. 691, and 975.

Magistrate may not quash his own commitment.

642. A magistrate, after he has committed a prisoner for trial, cannot legally quash the commitment, release one or more prisoners, and make him or them witnesses for the prosecution on the same trial. Const. No. 857.

Rules for making.

When to commit, and when not.

643. When the magistrate, in a case beyond his competency, has examined the complainant and witnesses for the prosecution (under sect. 5, Reg. IX. 1793), and has taken evidence on behalf of the accused (under cl. 1, sect. 2, Reg. VIII. 1830), with a view of affording him an opportunity of establishing his innocence, before committing him, he is to discharge the accused, if he considers the accusation groundless; or to commit him to the sessions, if it appears that there are reasonable grounds for suspecting him to have been concerned in the perpetration of the offence charged. But a commitment should not be made on

(a) For rules in regard to the incompetency of the session judge to try commitments made by himself in any other capacity, see subsequent section "Of the session judge," para. 745, et seq.

bare suspicion, where the evidence does not afford probable ground for conviction on trial; for, if conviction appear improbable, the commitment would not only be useless, and unnecessarily harassing to the accused and the witnesses, but also objectionable, as precluding conviction and punishment on evidence which might be subsequently obtained. Reg. IX. 1793. sect. 5. Reg. VIII. 1830. sect. 2. C. O. No. 54 of vol. 2, para. 13. See paras. supra 258 to 261.

Conditional release.

644. A magistrate is justified in releasing conditionally a prisoner, the evidence against whom does not justify a commitment; because, in such a case he can be put on his trial at any future period, should further evidence render such a measure expedient; whereas, if committed and acquitted, he could not be tried a second time. N. A. R. vol. 6, page 43.

Evidence of a single witness sufficient.

645. The testimony of a single witness, if there be no apparent reason to discredit it, is sufficient for commitment. But, at the same time, it is incumbent on a magistrate, previous to putting a prisoner on trial on solitary testimony of this description, to satisfy his own mind as to the credibility of the witness, by taking evidence to any points calculated to establish or disprove his testimony, by whomsoever such evidence may be indicated. C. O. No. 48 of vol. 2. Const. No. 634.

Private prosecutor not requisite.

646. It is not requisite in order to authorize a commitment, that a complaint should be made by a private prosecutor. N. A. R. vol. 1, page 277.

If one of those implicated is committed, all must be.

647. When the commitment of one prisoner is requisite under the regulations, all the other persons implicated in the same offence should likewise be committed, although the case as regards them is cognizable by the magistrate. Const. Nos. 379, and 622. N. A. R. vol. 2, page 396.

If regulation requiring commitment is previous to extension of magistrate's powers.

648. If the regulation requiring the commitment of a prisoner for a certain offence was passed antecedently to the extension of the magistrate's powers by sect. 19, Reg. IX. 1807; and if the magistrate deems the punishment, which he is thereby authorized to adjudge, to be adequate to the offence; he is competent to dispose finally of the case without commitment. Const. No. 206.

In cases of wounding, to wait for result;

649. In cases of wounding, the commitment should not be made until the result of the wounds has been put beyond doubt, either by the recovery from danger, or by the death of the wounded person. Const. No. 558.

and when commitment unnecessary.

650. In cases of assault or affray attended with wounding, neither the mere circumstance of a bone-fracture, nor the nature of the instrument of offence, necessarily takes the case out of the cognizance of the magistrate, it being left to him to commit or punish as he judges most expedient, with reference to the extent of the injury, the apparent intent of the aggressor, and other considerations of a similar nature. C. O. Nos. 53, and 102 of vol. 3.

In cases of theft, the prosecutor is sufficient to determine whether the case is committable.

651. In cases of theft, the declaration of the prosecutor on oath as to the value of the property taken must be considered sufficient to determine in the first instance the tribunal by which the case should be tried; provided there is no reason to impugn the truth of it, on which point the magistrate is competent to make such enquiries as he thinks proper, and to proceed accordingly. Const. No. 1030.

Previous conviction of heinous offence in burglary and theft.

652. It is imperative on the magistrate to commit for burglary (under sect. 2, Reg. XII. 1818), a person previously convicted of cattle stealing; but he is competent to punish (under sect. 3 of that regulation) a prisoner convicted of cattle stealing who has been previously convicted of the same offence. Const. No. 1273.

Not more than two witnesses to sooruthal required.

653. It is not necessary to bind over more than two witnesses to a sooruthal to give evidence before the sessions; it being always optional with the judge to summon the other individuals who may have witnessed it, in the event of his finding that their presence at the trial is indispensable. C. O. No. 49 of vol. 2.

Charge to be laid for the higher rather than the lower offence, if doubt as to grade of criminality;

654. Where there is any doubt as to whether the accused is guilty of a higher or lower grade of an offence of the same character, the commitment should be made for the higher grade; thus, if it be doubtful, from the evidence before a magistrate, whether the offence amounts to murder, or only to culpable homicide, the commitment should be for murder: and the reason of this is that a conviction of a minor offence may be had on a commitment for a graver offence of the same character, and founded on the same facts; but that the converse of the proposition does not hold good. On the other hand where a doubt exists as to whether a commitment should be made for knowingly receiving plundered property, or for the actual robbery, the prisoner should be committed on both counts; because here the acts are distinct and of a separate character. C. O. No. 54 of vol. 2, paras. 16, and 17. N. A. R. vol. 1, page 257; and vol. 3, page 56.

but on separate counts, if offences are distinct.

If arraigned as principal, may be convicted as accessary.

655. So also, a prisoner may be convicted as an accessary, when arraigned as a principal for the same offence. But if the facts or nature of the crime charged were different, it would not be regular to convict the prisoner of a charge, against which he had had no opportunity of defending himself. N. A. R. vol. 1, page 257. Const. 123 is an extract from the proceedings in this case.

In cases of stolen property found.

656. In amendment of the above order it was afterwards directed, that *in all cases* wherein stolen or plundered property has been found in the possession of prisoners committed for theft or robbery, a second count should be inserted in the commitment, charging them also with the offence of knowingly receiving the plundered or stolen property, as the case may be. C. O. No. 98 of vol. 2.

Examples of irregular commitment,

657. In a case of theft, attended with murder, the magistrate committed one of the persons concerned on the simple charge of theft, absolving him from the charge of participating in the murder; and in another case of theft, attended with burglary, committed on the same night, in which the same individual was concerned, he made no commitment, but discharged the prosecutor and witnesses, and appended his proceedings to the former case. The court deeming these proceedings irregular, quashed them, and directed that the prisoner should be committed on the whole of the first and also on the second charge. N. A. R. vol. 2, page 457.

658. A magistrate is not competent to commit a wife for adultery, when no such charge has been preferred against her by her husband. N. A. R. vol. 3, pages 177, and 298.

659. Whenever it is deemed expedient that a prisoner committed at one station should be brought to trial at another, the authority of government, or the Nizamut Adawlut must be obtained in the first instance under the provisions of sect. 3, Reg. VIII. 1822*; and the want of such previous sanction vitiates the whole of the proceedings. Whenever authority for deviating from the usual course has been obtained, it is to be certified on the record of the proceedings. C. O. No. 323 of vol. 1.

and consequent illegality of proceedings. Authority for deviating from usual course to be noted.

* *v.* ¶ 156 *et seq.*

Final roobakaree, and calendar.

660. In cases committed to the sessions, all that is necessary to be recorded in the roobakaree of the magistrate containing the order of commitment is, the charge preferred, a list of the witnesses examined, and the charge on which the prisoner is committed by the magistrate. C. O. No. 138 of vol. 3, rule 4.*

* *For form v. Appendix C, No. 3.*

Charge to be recorded precisely.

661. Magistrates are carefully to record in this roobakaree the precise charge on which they commit the prisoner; and such charge is to be entered in English and the vernacular on a separate paper annexed to the roobakaree, bearing the magistrate's official signature at full length, and the date of commitment. The magistrate is to take especial care that the proper Persian word is used to designate the offence charged; thus, in a charge of murder, the term used should be "*kutl-umd*;" and in a charge of manslaughter "*kutl-shibeh-umd.*" C. O. No. 54 of vol. 2, paras. 15 and 16.

Care to be taken that the vernacular term is correct.

If commitment is made under special instructions.

662. If a commitment is made under special instructions of the commissioner of circuit, either of his own authority as in cases of perjury, or in modification of the original order of commitment by the magistrate; or in cases of forgery or perjury by order of a civil judge, or other authority empowered to commit in such cases; the same is to be noted in the proceedings. C. O. No. 54 of vol. 2, para. 18.

In cases of theft, &c. circumstances of aggravation to be recorded.

663. In cases of theft, burglary, or receipt of stolen property, the magistrate is to make a point of recording, in his roobakaree of commitment, the express circumstance or circumstances of aggravation, which have led him to commit the case, instead of disposing of it himself under Reg. XII. 1818. C. O. No. 239 of vol. 1.

If the prisoner has been previously apprehended on a former charge.

664. When a magistrate has occasion to commit for trial a person, who has been formerly apprehended, he is to attach to his proceedings a report from his principal native officer, countersigned by himself, stating concisely the date and ground of the former apprehension, and the issue of the case. The adoption of this measure may be attended with benefit to the prisoner, by showing his former innocence; or it may be useful to the session judge, in some cases, by enabling him more readily to determine on the propriety or otherwise of requiring from the prisoner security for his future good behaviour. C. O. No. 203 of vol. 1.

If a landholder is committed.

665. If the magistrate commits any zemindar, independent talookdar, or other actual proprietor of land, he is to notify the commitment to the collector, that, if necessary, he may take measures to prevent any delay in the payment of the public revenue assessed upon the lands of the offender. *Beng.* Reg. IX. 1793. sect. 18. *Ced. Prov.* Reg. VI. 1803. sect. 18.

Proceedings on distinct charges.

666. Magistrates and session judges are to keep separate, as far as possible, the trials of prisoners upon distinct charges, especially where the prosecutors are also distinct. C. O. No. 2 of vol. 1.

What documents are to be submitted to the sessions with the calendar.

667. The calendar is to be accompanied with the magistrate's proceedings on each charge, which are to contain the following vouchers, or as many of them as from the nature and circumstances of the case are requisite and procurable, with such other documents as the magistrate may have in his possession, or judge necessary to be obtained for the information of the sessions court.

An attested copy of the complaint or charge.

An attested copy of the plaintiff's oath to the truth of the charge, in which is to be inserted, in cases of robbery and theft, the inventory of the money or property stolen or plundered, with the amount or computed value of it.

The prosecutor's recognizance to appear and prosecute the charge.

A copy of the warrant* for the apprehension of the offenders, or, in case the charge has been preferred in the first instance to the police, a copy of the proceedings of the police.

The name or names of the person or persons apprehended.

The examination of the person or persons apprehended.

The further examination of the prosecutor on oath in cases where any such examination has been taken.

A list of the witnesses summoned by desire of the prosecutor, particularizing the names of such as may be in attendance, and those who are absent, with the cause of the non-attendance of the latter.

The recognizances of the prosecutor's witnesses.

The depositions of the witnesses who have been in attendance.

The names of the witnesses who have been summoned at the requisition of the prisoner, specifying those who are in attendance, and such as are absent, and the cause of the non-attendance of the latter.† *Beng.* Reg. IX. 1793. sect. 14. *Ced. Prov.* Reg. VI. 1803. sect. 14.

* *v.* ¶ 231 *et seq.*

† *As regards witnesses v.* ¶ 319 *et seq.*

List of written documents adduced in evidence to be recorded in calendar.

668. In cases of forgery, embezzlement, and the like, an accurate list of all the written documents produced before the sessions court, as evidence for or against the prisoner, is to be recorded in the calendar of commitment, and submitted to the session judge. C. O. No. 211 of vol. 2.

Documents to be adduced in case of trial for offence committed in a foreign territory.

669. When individuals are brought to trial for offences committed out of the limits of the British provinces, a copy of the letter of the magistrate, applying for the authority of government to hold such trial,‡ as well as the letter of government conveying such authority, is to be filed with the proceedings. C. O. No. 4 of vol. 2.

‡ *v.* ¶ 165 *et seq.*

Immediate intimation of commitment to be given to judge by letter; and his reply.

670. Whenever a magistrate commits a prisoner for trial, he is immediately to intimate the same to the session judge, that no unnecessary delay may occur, in a prescribed form; § and the judge, in reply, is to intimate, in prescribed form,§ the day on which he may be able to take up the case. C. O. Nos. 109, and 234½ of vol. 2.

§ *v. Appendix C, No.* 8.

The same intimation to be given by roobakaree, and directions as to the class of crime.

671. A roobakaree, containing the same information, should be written and despatched as soon as the commitment has been made, and should specify the precise charge on which the prisoner or prisoners have been committed, and direct the mohafiz-dufter to enter the commitment under its proper heading, mentioning the number that the offence bears in the state-

ment. The final roobakaree containing the grounds of the commitment can be drawn out afterwards, though it should be the main object with every magistrate to forward the calendar and his proceedings to the session judge as soon as the attendance of the parties and witnesses can be procured, in order that the trial may be proceeded upon with as little delay as possible. C. O. *W. P.* No. 185, para. 2. and *L. P.* No. 190, para. 8 of vol. 2. And No. 98 of vol. 3, para. 22, of magistrates' rules.

Delay in forwarding the case to be avoided.

672. A case is to be considered pending before the session judge from the date on which the parties reach his court, whether such date be that fixed by him, or one posterior. C. O. No. 71 of vol. 3.

When the responsibility of the session judge commences.

673. A separate calendar of commitments is to be kept for each month, and the commitments are to be entered on them in regular order. C. O. No. 109 of vol. 2.

A separate calendar to be kept for each month.

674. In preparing the calendar (in accordance with the form given in sect. 13, Reg. IX. 1793 *for Beng.* and sect. 13. Reg. VI. 1803 *for Ced Prov.*) (a) the prosecutor's witnesses are to be classed under three subordinate heads, or as many of them as are applicable in each case; viz. 1st, witness to the charge; 2nd, witnesses to confessions; 3rd, witnesses to character. So also the witnesses on the part of the prisoner are to be classed under two heads; viz. 1st, witnesses to the defence; and 2nd, witnesses to character. And the magistrate should also adopt any other subordinate head, which appears useful or necessary.* C. O. No. 170 of vol. 1; and appendix to C. O. No. 54 of vol. 2.

Classification of witnesses in calendar.

* *For form of calendar v. Appendix C, No. 9.*

Circuit.

675. Upon receiving notice from the judge of the day on which he intends to take up the case, the magistrate is to cause public notice of it to be given by a written publication, requiring all persons discharged upon bail, and all prosecutors and witnesses who have been bound over to appear, to attend on the day fixed, under the penalty of forfeiting their recognizances.(b) Reg. IX. 1793. sect. 11.

Proclamation of date on which judge will take up the case.

676. Prisoners committed by a magistrate after the arrival of the session judge on circuit at his station, are always to be tried at the session then pending, provided that no material delay occurs in procuring the attendance of the witnesses, or in other preparations for the trial. But in order to prevent the indefinite detention of the judge by the trial of such commitments, magistrates are restricted to one supplementary calendar, including persons committed or held to bail for trial before the sessions court, during the session of the court, on the trial of the prisoners, named in the original calendar. C. O. Nos. 9, 49, and 77 of vol. 1.

Commitments made by magistrate after the arrival of session judge on circuit.

677. In case of an officer being vested with magisterial powers, and deputed permanently or temporarily to exercise them within a portion of a district, or of an officer's being placed in charge of a tract of country comprising portions of several jurisdictions, it is competent to government, at the time of creating such an authority, or at any time subsequently

Commitments made at subordinate station.

In the case of a newly created

(a) These sections, as well as all parts of regulations prescribing forms of periodical statements, &c. have been rescinded by sect. 2, Reg. VII. 1829; and by clause 1, section 3, the Sudder Court was directed to prescribe all such forms, and to fix the periods of their transmission. But it was ordered at the same time that all forms previously prescribed by the regulations should remain in force, until the Sudder Court should alter or direct the discontinuance of them.

(b) This section was enacted with reference to the periodical arrival of the court of circuit; and a copy of the above publication was directed to be published in each pergunnah of the district. The provision may still apply to joint-magistrates, at whose stations quarterly sessions are held.

magistracy or joint-magistracy government is to decide where and how the sessions are to be held.

to determine and prescribe, by an order under the official signature of a secretary to government, at what station and in what manner prisoners committed to take their trial before the court of circuit, for offences perpetrated within the limits assigned to such officer, are to be brought to trial for the same. Notice of every such determination is to be given to the Nizamut Adawlut, and that court is to take the necessary steps to carry the same into execution. Reg. VIII. 1822. sect. 6.

Government may direct the sessions for any joint-magistracy to be held at any station within the same division.

678. The gaol deliveries are ordinarily to be held at the station of the magistrate or joint-magistrate making the commitments: but it is competent to government, and the nizamut adawlut with the authority of government, to direct the sessions for any district, which is under the authority of a joint-magistrate, to be held at the sudder station of any of the zillahs in which the thanas, constituting the jurisdiction of such officer, or any of them, may be situated, provided that such station is within the division of the commissioner to whom the joint-magistrate is subordinate. Reg. I. 1829. sect. 3, cl. 3.

679. This is explained to mean that it is competent to government to direct the sessions for any joint-magistracy to be held generally at any station within the jurisdiction of the commissioner of circuit to whom the joint-magistrate is subordinate, so long as the orders to that effect remain unrescinded. Reg. II. 1831. sect 4.

Such commitments to be forwarded to the sudder station.

680. When a magistrate or joint magistrate, having jurisdiction limited to the district of a session judge, or extending to other districts, is stationed at any place within the jurisdiction of the judge, all cases committed to the sessions by such magistrate or joint-magistrate, are to be submitted to the judge through the magistrate at the sudder station as soon after commitment as practicable; and the judge is authorized and required to try all such cases under the same rules, as if committed by the magistrate of the sudder station.(a) Reg. VII. 1831. sect. 12, cl. 1.

681. Prisoners committed by joint-magistrates not residing at the sudder station, should be forwarded to the sudder station, and brought to trial at the regular sessions of the district, in like manner with prisoners included in the commitments by the magistrate.(b) Const. No. 135.

Disposal of proceedings and prisoners in such cases Information of the sen-

682. In such cases, the proceedings on the commitments are to be returned to the office of the joint-magistrate, by whom they were committed, after the completion of the trials; and copies or abstracts of the sentences of all prisoners, whether convicted and sentenced to punishment, or acquitted and discharged, are also to be sent to him. If the prisoners are

(a) This rule, however, is obsolete in practice, except as regards the districts of Howrah and Baraset. For, by the orders of the Bengal Government, No. 220, dated February 6th, 1843, and passed apparently under the authority of the provisions of the preceding paragraphs, quarterly sessions are held at the stations of certain independent joint magistrates, where session judges are not permanently stationed; viz. Noacolly, Furreedpore, Chumparun, Bograh, Maldah, and Pubnah. The Nizamut Adawlut was directed to fix the times of such sessions, only taking care that not less than three months should occur between each. Under a similar rule (I presume) the judge of Bhaugulpore holds quarterly sessions at Monghyr. The commitments of Howrah and Baraset are tried at Alipore by the judge of the 24-Pergunnahs.

(b) This construction was superseded by the provisions of Reg. XVII. 1825, which prescribed special rules for holding the sessions at the stations of the joint-magistrates of Baraset, Balasore, Malda, Monghyr, and Shahjehanpore; but that regulation is rescinded by Reg. I. 1829; and cl. 1, sect. 12, Reg. VII. 1831, quoted above, re-enacts the rule. See "Index to the Constructions;" head Commitments, No. 2, page 22.

sentenced to a period short of perpetual imprisonment, and if banishment form no part of the sentence, they are to be sent to be imprisoned at the station of the joint-magistrate, provided the jail of such station have room and accommodation for them without danger to their safe custody or health: where this is not the case the prisoners must, either all or some of them according to the necessity of the case, be confined in the jail of the magistrate's station. C. O. No. 288 of vol. 1.

tences to be sent to the joint magistrate.

683. But, if on account of distance or other cause it is deemed expedient to limit the jurisdiction of the judge to cases originating within the limits of his own district, or to exclude from his jurisdiction all the commitments made by such magistrates or joint-magistrates and to transfer them for trial to the judge of another zillah, or to leave them to be decided by the commissioner of the division at the station of those magistrates or joint magistrates, it shall be competent to the government to direct the same. Reg. VII. 1831. sect. 12, cl. 2.

But discretion vested in government in defining the jurisdiction of the judge.

684. It is also competent to any commissioner, to whom the session duties of the sudder station of any zillah, at which he may ordinarily reside, may be reserved, to require the magistrates or joint magistrates, stationed within the limits of that zillah, to forward all cases committed, at such periods as the commissioner may deem proper, for trial before himself at the sudder station. Reg VII. 1831. sect. 13, cl. 1.

Commissioner of circuit, engaged in sessions, may fix the periods of holding such.

Prisoners.

When fetters may be imposed.

685. As it is the evident intention of the regulations that no prisoner, before he is brought to trial, should suffer more corporal restraint or personal ignominy than may be unavoidable for his safe custody and appearance at the time of trial,—magistrates are not to confine in fetters any person left for trial before the sessions, who is charged with a bailable offence, and committed to prison from inability to find bail; or who, though not admitted to bail, is not charged with an heinous offence, such as from the nature and circumstances of the case, considered with the prisoner's condition of life, may appear to render the use of irons indispensably requisite for his secure custody. And even in regard to heinous offences, such measure of severity should never be resorted to, except in extreme cases, or where the prisoner is of a character so dangerous as to render the imposition of fetters absolutely necessary to his safe custody. C. O. Nos. 40, 206, and 210 of vol. 1, and No. 32 of vol. 2.

Duty of session judge on receiving commitment.

Trial to be proceeded upon immediately after commitment.

686. A main object of Regulation VII. 1831, was to relieve parties and witnesses from the inconvenience of frequent journeys to and from sudder stations, and lengthened detention when there. A session judge should not, therefore, hold monthly sessions of jail delivery at stated periods; but should proceed upon each trial as soon as practicable after the commitment has been made by the magistrate. Circumstances may occur to prevent a judge from taking up the case immediately, but he is required to use his utmost endeavors to prevent unnecessary delay. C. O. No. 108 of vol. 2. See also sect. 4, Reg. VII. 1831.*

* ¶ 729.

Judge may direct the charge to be amended before trial;

687. On first taking up a case committed for trial, the judge should compare carefully the written charge, on which the prisoner is committed, with the facts of the case as stated in the magistrate's roobakaree of commitment; and, with reference to paras. 15, 16, 17, and 18 of C. O. No. 54 of vol. 2, in this stage of the proceedings, he should cause the magistrate to rectify what may be erroneous, and supply what may have been omitted. He should cause the commitment to be amended, before proceeding to try the prisoner. C. O. Nos. 135, and 98 of vol. 2. Const. No. 857.

instructing the magistrate under what heading the case is to be included.

688. Should the session judge see reason to direct any alteration of the charge, on which a prisoner has been committed, he will distinctly state in his order to the magistrate the heading under which the case should be included in his statement No. 1, part 1; but he will postpone entering the case in his own statement No. 1, until he has heard from the magistrate, that he has carried the order into execution. C. O. *W. P.* No. 185 of vol. 2, para. 3. *L. P.* No. 190 of vol. 2, para. 9. No. 98 of vol. 3, para. 6 of judges' rules.

But the charge may not be amended after the prisoners have pleaded to it.

689 On a charge of highway robbery with wounding, the session judge, conceiving that a higher crime, viz. attempt to murder, was involved, returned the proceedings for the charge to be amended, after the commencement of the trial, and after hearing the evidence in attestation of the mofussil confessions. Held that these proceedings were irregular, as the higher charge was brought forward after the prisoners had given their answer to the charge on which they were first committed. N. A. R. vol. 6, page 7.

Power of judge to annul commitment, and to order re-commitment on *higher* charge.

690. The Calcutta Court hold that, since the enactment of Act XXXI. 1841, the session judge has no power to alter an indictment or charge once preferred by a magistrate against a prisoner, *to the prejudice of such prisoner*; but he may annul the commitment and direct the magistrate to re-commit the prisoner on a *minor* charge. The Western Court consider that the judge has the power of interference to direct the re-commitment on a higher as well as a lower charge. Index to constructions, page 22, heading "commitments," note to No. 12. See also letter of the Nizamut, November 3, 1843, in appendix to Mr. Cheap's edition of the Circular Orders.

Judge cannot annul commitment so as to prevent trial;

691. When a person charged with a criminal offence has been committed, or held to bail, by a magistrate, to stand his trial before the sessions, it is not competent to the session judge to annul the magistrate's order, and to prevent the regular trial of the person so committed or held to bail. Reg. VI. 1818. sect. 3, cl. 2.

but the Nizamut annulled for want of inquiry.

692. But the Nizamut Adawlut, considering a commitment to have been made without due enquiry, annulled it, and directed the magistrate to make further enquiry, and re-commit if he saw sufficient grounds. Const. No. 290.

But judge may cancel a commitment, reporting to the Nizamut;

693. But session judges are competent to cancel commitments. This power, however, should be used with the greatest caution; and an English report detailing the reasons upon which it has been thought necessary to resort to this measure, should be submitted in each case to the Nizamut Adawlut. C. O. No. 111 of vol. 2; and No. 54 of vol. 2, para. 19. Const. No. 114.

though not on the ground of insufficiency of proof.

694. A session judge is not competent to annul a commitment merely on account of the want of proof, or on the ground that the evidence as shown in the calendar appears insufficient for conviction. In such cases, he should, after trial, either pass sentence of acquittal; or, if he thinks the charge susceptible of further proof, direct the magistrate to supply the defect. Const. Nos. 1030, and 1122. N. A. R. vol. 5, page 116.

Sentence must be passed on every prisoner.

695. Under all circumstances a sentence of conviction or acquittal must be passed upon every person committed for trial. N. A. R. vol. 5, pages 145, and 173.

696. But, in a trial which was held to be illegal, and annulled, and the magistrate desired to recommit in a legal manner, the court did not think proper to order the re-commitment of some of the prisoners, against whom there appeared to be no sufficient evidence; and who, had the trial been legal, would have been regularly acquitted and released. N. A. R. vol. 2, page 393.

But when trial was held illegal, the Nizamut did not order the re-commitment of certain prisoners.

697. If a magistrate through error or negligence commits a case, of which he is himself competent to dispose, the session judge should try the case, reporting the conduct of the magistrate for the orders of the Nizamut Adawlut. So, also, in a doubtful case (as of theft), if the judge be of opinion, that the case is within the magistrate's competency, and no special grounds are assigned in the roobakaree of commitment, or shown on the proceedings, to justify the commitment or induce the inference that the magistrate considers the punishment which he can award insufficient,—he cannot return the proceedings without trial, and instruct the magistrate to dispose of the case; but he should call upon the magistrate to supply the omission; and in the event of insufficient ground for commitment being shown, he should nevertheless proceed to decide the case, recording a caution to the magistrate against making unnecessary commitments for the future, and not exceeding (if the prisoner be convicted) that measure of punishment, which it would have been competent to the magistrate to award if he had himself disposed of the case. Const. Nos. 301, and 391. [This course of procedure appears to be that most strictly in accordance with law; but in practice it is not unusual for the judge to annul such commitment, and to direct the magistrate to dispose of the case himself. And the court approved of such disposal by a judge of the commitment of a burkundaz for extortion, although cl. 3, sect. 11, Reg. XX. 1817, (under which the magistrate was desired to dispose of the case himself) simply declares that a violation of the rule "shall be punishable as a criminal offence on conviction before the magistrate or court of circuit." See Const. No. 782. In a case of a prisoner escaping from jail without violence, which under cl. 1, sect. 5, Reg. XII. 1818 is expressly declared to be cognizable by the magistrate, the Nizamut quashed the proceedings on the commitment, and directed the judge to remand the prisoner to be dealt with by the magistrate. See Const. No. 501.]

Mode of procedure when a magistrate commits to the sessions a case, of which he is himself competent to dispose.

698. A formal razeenamah, or compromise, ought not to be admitted by a session judge, to bar the trial of any commitment made by a magistrate; both as there is no provision for such in the existing regulations; and as the practice of discharging the prisoner on acquittal, when evidence is not adduced for his conviction, and the ends of public justice do not require a postponement of the trial for further evidence, appears preferable to the admission of a compromise, which might perhaps leave the prisoner exposed to a future prosecution. C. O. No. 187 of vol. 1.

Judge cannot admit a formal compromise of a commitment.

699. A session judge is not at liberty, in the case of a commitment made by a magistrate, to punish the prosecutor for a groundless and malicious complaint; as the very fact of the commitment having been made by the magistrate affords sufficient presumption that the complaint is not of that nature:—though he is competent to direct the commitment of the prosecutor, and his witnesses for perjury, in the event of his seeing reason to believe that a false accusation has been preferred on oath, and that an attempt has been made to substantiate it by false evidence. Const. Nos. 528, and 530.

Judge cannot punish for a groundless complaint in a commitment.

SECTION XVIII.

OF THE PUBLIC PROSECUTOR.

Any person may officiate as.

700. The magistrate is at liberty to direct any person, whom he may think fit, to officiate as government pleader for conducting prosecutions on the part of government. Const. No. 600.

Magistrate may direct public prosecution at his discretion.

701. A magistrate is perfectly justified in exercising a discretion in appointing the government pleader to prosecute in cases of murder, notwithstanding that there may be near relations of the deceased competent to prosecute. Const. No. 778.

Even when the injured party declines.

702. Where the injured party, in a case of theft, declines prosecuting, the magistrate may still, if he think fit on a view of the nature of the case, direct a public prosecution. Const. No. 318.

When there is no private prosecutor, the government pleader should be ordered to prosecute.

703. In a case of murder and wounding, the law officers convicted the prisoner of the murder, but would not give a futwa on the charge of wounding, as no one had prosecuted upon that charge. The court observed that, to complete the proceedings on the trial, the magistrate or the sessions judge should have ordered the government pleader to prosecute, in the absence of the wounded persons. N. A. R. vol. 2, page 241.

So, when the prosecutor is an infant.

704. In a case of rape the only prosecutor appearing being the ravished girl, who was an infant, the proceedings were returned with instructions that the vakeel of government should be directed to prosecute. N. A. R. vol. 3, page 170.

Employment of superintendent of police, or other officer to conduct.

705. There is no objection against employing the superintendent of police, or any other officer whom the government may appoint, not being the committing officer, to conduct a prosecution before the sessions court, provided he be recognized as the prosecutor, or agent of government for conducting the prosecution, and be not authorized to interfere in any other capacity in the trial. Const. No. 279.

Officer not to be so employed when he has himself made the commitment.

706. In cases of commitment made by the superintendent of police in his capacity of magistrate, he should not be employed to conduct the prosecution before the sessions court; though no objection would attach to the nomination of his assistant, or the assistant to the magistrate, to manage the prosecution in such cases. Const. No. 279.

Government prosecutor is not to be required to make oath to the truth of the charge.

707. In charges preferred and prosecutions conducted on the part of government, the vakeel of government, or other person acting as prosecutor for government, is not to be required to make oath, or subscribe a declaration to the truth of the charge, when preferring it to the magistrate, or stating it to the sessions court. *Ced. Prov.* Reg. VIII. 1803. sect. 25, cl. 5. *Beng.* and *Ben.* Reg. L. 1803. sect. 4.

SECTION XIX.

OF MOKHTARS AND AGENTS.

For the prosecution.
Complaints may be preferred to the magistrate by an agent, in certain cases.

708. The attendance and deposition of the complainant is not indispensable in preferring a criminal charge, when sufficient reason can be assigned for his non-attendance. If the complainant is unable to attend in person, or if he were not himself present at the commission of the act complained of, his written plaint, presented by an authorized agent, and corroborated by the deposition on oath, or solemn declaration, of one or more persons present, or otherwise personally informed of the truth of the complaint, is sufficient grounds for receiving the same, and for issuing process against the party accused, unless the magistrate see reason for making previous inquiry. (See paras. 233, et seq.) Reg. IX. 1807. sect. 4.

But not unless substantial reason be shown for the absence of the prosecutor.

709. But serious inconvenience having been experienced from the indiscriminate permission allowed to vakeels and agents to conduct such prosecutions under the above rule, it was enacted, that in ordinary cases, individuals having charges of a criminal nature to prefer should attend in person to institute and conduct the prosecution before the magistrate, and likewise before the sessions court; and that such agents should not be permitted to interfere in the conduct of prosecutions, unless substantial reasons be shown (to be recorded of course in the proceedings of the magistrate) why the prosecutor himself should not attend to carry it on in person. It is the duty of the Nizamut Adawlut, and of the session judge, to restrain any ill-judged exercise of the discretion thus vested in the magistrate. Reg. III. 1812. sect. 3.

So, before the sessions. But judge may require the attendance of the prosecutor.

710. On a trial before the sessions, the prosecutor is to be allowed the option of carrying on the prosecution in person, or by a vakeel duly appointed, excepting in cases in which the Mahomedan law requires the prosecutor to appear in person at the trial of the prisoner. This rule, however, is not meant to prohibit the judges causing prosecutors to attend in person in every case, in which their *vivâ voce* evidence is deemed necessary, provided they are not Mahomedan or Hindoo women of a rank and situation in life, which, according to the customs and prejudices of the country, would render it improper to compel them to appear in a court of justice. *Beng.* Reg. IX. 1793. sect. 48. *Ced. Prov.* Reg. VII. 1803. sect. 16.

For the defence.
In bailable cases magistrate may allow the defendant the option of appearing by vakeel.

711. Upon a complaint being preferred to a magistrate for any bailable crime or misdemeanor, he is empowered to issue a summons requiring the accused to appear, according to the circumstances of the case, in person or by vakeel to answer the charge. (See para. 239.) Reg. IX. 1807. sect. 6, cl. 2.

Judge may order magistrate to admit.

712. A session judge may order a magistrate to admit a party to appear and answer by attorney, if he sees sufficient reason for so doing, without calling for the proceedings. Const. No. 730.

Judge may admit the appearance of defendant by vakeel at the sessions; but may subsequently require his personal attendance.

713. A session judge is empowered to comply in the first instance with applications made to them by parties held to bail for trial at the sessions, to be allowed to attend and plead upon the trial by a vakeel duly constituted, instead of attending in person, when strong and sufficient reason is stated for dispensing with the personal attendance of the party in such cases: provided that the judge may, during the trial, exercise a full discretion, notwithstanding any previous orders, in requiring the personal attendance of the defendant, whenever, on consultation with his law officer, it may appear requisite under the provisions of the Mahomedan law, or generally for the ends of justice. Reg. VI. 1818. sect. 3, cl. 4.

Such vakeel need not be pleader in civil court.

714. The vakeel referred to in the preceding paragraphs need not be one of the established pleaders of the civil court. Const. No. 295.

Defendants on trial may avail themselves of the advice of vakeels.

715. Parties committed for trial before a sessions court, and not exempted from personal attendance under the above provisions, may be allowed to avail themselves on trial of the advice of vakeels or agents; but such vakeels or agents cannot be permitted to plead, or to interfere in any way whatever in the court's proceedings. Const. No. 1012.

Vakeels of civil court may not practice in the foujdaree court, except with the sanction of the judge, or on the part of government.

716. The authorized pleaders of the civil courts are prohibited, without obtaining the previous sanction of the judge, from officiating as agents or mokhtars in any prosecution, trial, or proceeding before the magistrates or their assistants. This prohibition does not apply to the cases of pleaders who may be employed on the part of government in conducting the prosecution of persons charged with criminal offences, or in the execution of any other duties in the criminal department, which such pleaders may be directed or authorized to perform on the part of government, under the regulations which are now or may hereafter be in force. Reg. XXVII. 1814. sect. 17.

Appeals and miscellaneous cases may be conducted by any agent.

717. Appellants from the decisions of magistrates are at liberty to employ whom they please to conduct their appeals. So also in cases under Act. IV. 1840.(a) But in every case, whatever persons are so employed, the amount of their fees should be adjusted between them and their constituents, and their remuneration secured before undertaking their business; and they should be given to understand that, if they neglect to do so, no assistance to enforce payment of it afterwards will be given. Const. Nos 371, and 642.

Remuneration.

It cannot be enforced under Reg. VII. 1819.

718. Regulation VII. 1819 has no reference to the wages of a mokhtar: it applies to workmen and domestic servants only. Const. No. 770.

General mokhtars.

* *v. section* 2, *chapter* 4, "*Of summons.*"

719. The provisions contained in sections 4 and 6, Reg. IX. 1807, and sect. 2, Reg. II. 1806,* clearly recognize the admission of general mokhtars; but, in admitting or rejecting this description of agent, much must of course be left to the discretion of the local authority according to the particular circumstances of each case. Const. No. 512.

General mokhtarnamahs to be returned.

720. A general power of attorney may be returned to the party filing, after being attested and acknowledged, at the discretion of the local authority. Const. No. 917.

Permanent mokhtar not to be allowed at police thana.

721. Police darogahs are enjoined, under penalty of dismission, not to permit any established vakeel or mokhtar to be permanently employed at their thanas on the part of any landholder, farmer, local agent, or other person. But this rule is not meant to preclude the

(a) This construction was held on the provisions of sect. 3, Reg. XV. 1824.

occasional employment of a vakeel, or mokhtar, for any specific purpose, when it may be necessary. Reg. XX. 1817. sect. 11, cl. 4.

Police officers are forbidden to employ mokhtars at the sudder station for official purposes.

722. Police officers are prohibited from employing any mokhtar, or vakeel, at the station of the magistrate, for the purpose of receiving and transmitting the salaries of the thana establishment, or for any other purpose connected with their public functions, except in particular cases, wherein they may be especially authorized by the magistrate to employ a vakeel. Reg. XX. 1817. sect. 11, cl. 5.

Payments to.

723. Money deposited in court as payable to a party should never be paid to a vakeel, save under specific authority conveyed in the vakalutnamah: and for any sum paid away in any other mode, the officer making the disbursement must be held personally responsible. Const. No. 1360.

Misconduct of.

724. A magistrate is competent to refuse to acknowledge a mokhtar in his court, who may be proved guilty of any gross misconduct in the execution of his duty in that capacity; and one proved act of such misconduct is sufficient to warrant his general rejection. Const. Nos. 607, and 809.

Mahomedan Law.

Prosecution.

725. A person may appoint another his agent for the management of a suit or criminal prosecution, because an individual is sometimes prevented from acting in his own person, in consequence of accidental circumstances, such as sickness; and because every person is not himself capable of managing a business of this nature. So, also, it is lawful to appoint an agent for the payment or exaction of rights; but this does not apply to cases of *hudd* or *kisas*, for the absence of the principal would give rise to a doubt of the prosecution, which in such cases would prevent the infliction of a penalty. An agent may be employed even when the principal is present, because every one is not acquainted with the mode of conducting a criminal prosecution. An accused person, also, may employ an agent to conduct his defence; but a confession made by such agent is not admissible against his constituent, because it is doubtful whether he has been authorized to make such confession. These are the opinions of Haneefah and Mahomed in opposition to Aboo Yoosuf; but it is not necessary to examine the points of difference between them. A woman, who is not used to appear in public, ought to appoint an agent for the management of her cause. The validity of agency, in any business, rests upon two conditions: *first*, that the constituent be himself legally empowered to perform the business for the execution of which he appoints another; *secondly*, that the agent be of sound understanding, so as to be capable of executing the business to which he is appointed.(a)

Defence.

A woman may always employ.

Validity of agency.

(a) Hedaya Translation, Book 23. "Of vakalut, or agency."

SECTION XX.

OF THE FUNCTIONS OF THE SESSION JUDGE.

Appointment.

726. Whenever the measure is deemed advisable, it is competent to government to invest the civil judges within their divisions with full powers to conduct the duties of the sessions. Reg. VII. 1831. sect. 2.

Oath.

727. Session judges so appointed are to take the oath prescribed for a judge of circuit, before such person as government may direct, and are to be guided in the conduct of their duties by the rules previously applicable to commissioners of circuit, subject to the modifications contained in this regulation. Reg. VII. 1831, sect. 3. [The following is the oath which a judge of circuit was required to take by sect. 34, Reg. IX. 1793 (*Ced. Prov.* sect. 5, Reg. VII. 1803): "I, A. B. solemnly swear, that I will truly and faithfully execute the duties of judge of the court of circuit for the division of ——; that I will administer justice according to the regulations that have been or may be enacted by the governor general in council, to the best of my ability, knowledge, and judgment, without fear, favor, promise, or hope of reward; and that I will not receive, either directly or indirectly, any present or nuzzur, either in money or in effects of any kind, from any party in any suit or prosecution, or from any person whomsoever on account of any suit or prosecution to be instituted, or which may be depending, or have been decided, in the court of circuit of which I am judge; nor will I knowingly permit any person or persons under my authority, or in my immediate service, to receive, directly or indirectly, any present or nuzzur, either in money or in effects of any kind, from any party in any suit or prosecution, or from any person whomsoever on account of any suit or prosecution to be instituted, or which may be depending, or have been decided in the said court; nor will I, directly or indirectly, derive any advantage or emolument from my station, excepting such as the orders of government do or may authorize. So help me God."]

General duties.
Connected with criminal justice transferred from commissioner of circuit.

728. It is competent to the governors of Bengal and of Agra respectively, by an order under the signature of the secretary to government, to transfer any part, or the whole of the duties connected with criminal justice, from any commissioner of circuit to any session judge, and to define the powers, which shall be exercised by each respectively. Act VII. 1835.

To try commitments without delay.

729. Session judges so appointed are to try every commitment that may be made by the magistrates of their respective jurisdictions, as soon after it is made as may be convenient; and jail-deliveries for each district are to be held at least once in every month. Reg. VII. 1831. sect. 4.

Trying commitments
Hearing appeals.

730. The duties of a session judge, in a district to which Act VII. 1835 has been extended, consist in trying all commitments made by the magistrate; in hearing and disposing of all appeals preferred from orders passed by the magistrate in criminal trials, including

the whole progress of a case from the commencement to the date of final sentence; and in exercising a general superintendence and control over the proceedings of the magistrate in the administration of criminal justice. C. O. No. 233 of vol. 2.

Superintending the administration of justice.

Powers.

The same as commissioners of circuit

731. Session judges so appointed possess all the powers formerly confided to commissioners of circuit, as far as regards the summoning and examination of witnesses, and the passing sentence of acquittal and conviction without reference; but they are not competent to exercise any authority over the magistrates, or any interference in matters of police.(a) Reg. VII. 1831. sect. 5.

On conclusion of trial, to pass sentence, or to refer the case.

732. On the conclusion of the trial or trials, the session judges so appointed are to proceed to pass sentence of conviction or acquittal, or to refer the trial to the Nizamut Adawlut if required to do so under the rules previously applicable to the commissioners of circuit. Reg. VII. 1831. sect. 6.

Power to fine unlimited.

733. The power of a session judge to fine is unrestricted as to amount, except when it is defined by any specific regulation, as in the case of *dhurna* by Reg. VII. 1820. Const. No. 959.

Miscellaneous duties.

To report misconduct or disobedience on the part of the magistrate.

734. The session judge is to report to the Nizamut Adawlut every instance, in which it appears to him, that the magistrate has been guilty of neglect, or misconduct, in the discharge of his duty. He is also to acquaint the Nizamut Adawlut whenever the magistrate omits or refuses to obey his orders. *Beng.* Reg. IX. 1793. sect. 63. *Ced. Prov.* Reg. VII. 1803. sect. 30. C. O. No. 233 of vol. 2, para. 3.

To propose new rules for the administration of justice, or the police.

735. The judge is to submit to the Nizamut Adawlut such rules as may appear to him calculated for the better regulation of the trials of prisoners, the administration of justice, or the police of the country. *Beng.* Reg. IX. 1793. sect. 65. *Ced. Prov.* Reg. VII. 1803. sect. 33.

Annual report on the system of administering the criminal laws, &c.

736. The judge is to submit to the Nizamut Adawlut an annual report, containing such observations as he has made regarding the effect of the present system for administering the criminal laws in the prevention and punishment of crimes; as well as such other matters as he may think deserving the notice of the court. *Beng.* and *Ben.* Reg. IV. 1797. sect. 12. *Ced. Prov.* Reg. VII. 1803. sect. 37.

737. The session judge is to bring to the notice of the court, whatever he may consider worthy of remark either in the laws in force, or in the instruments for administering them, comprehending such information of the condition of the district under him, as local experience and observation will readily supply, but to convey which the most elaborate figured statements would be inadequate.(b) C. O. No. 98 of vol. 3, para. 11.

Copies of report connected with the police to be sent to the superintendent.

738. Session judges are to furnish the superintendent of police with copies of such parts of the reports transmitted by them to the Nizamut Adawlut, as relate to the state of the police, together with copies of the statements reporting the number and nature of the offences committed. C. O. Nos. 243, 251, and 324 of vol. 1; and No. 3 of vol. 2.

(a) The commissioners of circuit were vested by cl. 1, sect. 3. Reg. I. 1829, with "all the powers that may be now legally exercised by judges of circuit when holding the sessions of gaol delivery, or by the courts of circuit collectively."

(b) The subject of periodical reports and statements will be treated more at large in another place.

Not to issue general instructions to magistrate.

739. A session judge is not warranted in issuing instructions of a general nature for the conduct of the magistrate; that power being expressly reserved to the Nizamut Adawlut by sect. 3, Reg. X. 1796. Const. No. 204.

The same rules applicable to other officers holding sessions.

740. The foregoing rules (of this regulation) are applicable to all cases in which any other person, not being the judge of the district, may be directed to hold a trial or sessions within any division, in which he may not have charge of the office of commissioner. Reg. VII. 1831. sect. 11.

Government may appoint another officer to hold the sessions

741. It is at all times competent to government to direct any commissioner, or judge, not being the magistrate by whom commitments were made, to hold the sessions of gaol delivery, with the powers and authority of a court of circuit, whenever the arrangement appears necessary for the prompt and efficient administration of justice, and circumstances render it inconvenient to appoint such officer to officiate with all the powers of the commissioner.(a) Reg. I. 1829. sect. 5, cl. 2.

(a) In reference to the late appointment of an officer to be additional sessions judge for the zillahs of 24-Pergunnahs, Hooghly, Nuddea, and East Burdwan, the following instructions were communicated by government to the Nizamut Adawlut.

"The primary duty of the additional sessions judge will be to try the commitments of the magistrates and joint-magistrates of the districts above named, including Howrah and Baraset; and for this purpose he will be expected to visit each sudder station, viz.: Allipore, Hooghly, Kishnaghur, and Burdwan, once in every three months; relieving the session judges of those zillahs of all sessions trials, except such as they may be directed by the sudder court to take up and dispose of, in consequence of the detention of the additional judge elsewhere, and in order to prevent delay in the administration of justice. These directions may either be issued by the court from time to time on inspection of the returns, or the court may in communication with the judges and additional judge, and after some experience of the working of the new plan, give them general instructions for their guidance in the disposal of sessions cases.

"The additional session judge will, as is at present done by the session judge, try the Baraset and Howrah commitments at the sudder station of the 24-Pergunnahs.

"The sudder court will exercise their discretion in assigning to the additional judge the hearing of criminal appeals (or a portion of them) from the decisions of magistrates and joint-magistrates. It would doubtless be very desirable that all the appeals should be heard by the additional session judge: but the court will of course be guided in this respect by their experience of the amount of sessions business which may press upon him, and his consequent ability or inability to undertake other duties.

"The additional judge will, after communication with the zillah judges, who should be able to spare a portion of their establishment for his assistance, report directly to the government on the establishment which he may consider necessary for the duties of his office. In the meantime he is authorized to entertain temporarily whatever establishment may be requisite for his purposes. He will indent for stationery either through the zillah judges or independently of them as he may find convenient; regarding forms and statements the additional judge will be guided by such instructions as the court may think proper to give him.

"The circuit houses at each station will be placed at the disposal of the additional judge during the terms of his sessions visits. As other officers* are also entitled to the use of these houses, the additional judge will endeavour to time his visits in communication with them, so that there may be no embarrassment regarding priority of occupation.

"The zillah judges and magistrates will be directed to afford to the additional judge on occasion of his circuits all the official accommodation and assistance in their power."

* Superintendent of police, L. P., commissioners of revenue, and executive officers of the division when on duty at stations not their head quarters.

742. Commissioners of circuit appointed under the provisions of Reg. I. 1829, are authorized and required, without making any previous reference for sanction either to government or to the Nizamut Adawlut, to hold jail deliveries as often as may be convenient for any of the districts within their divisions, whenever, owing to absence, indisposition, or other cause, the session judge shall have been unable, for a period exceeding one month, to perform that duty, or whenever such judge may be prevented from trying any case or cases by reason of his having made the commitment or commitments in his capacity of magistrate or joint-magistrate, or from any other cause. Reg. VII. 1831. sect. 13, cl. 2.

Commissioners of circuit to hold sessions in the absence of the judge

743. Whenever a session judge has been prevented by any of the above causes from holding the sessions of his district for the period of one month, he is to communicate the circumstance to the commissioner of division, if in the western provinces; or direct to the nizamut adawlut, if in the lower provinces; with a view to such arrangements as the emergency may appear to demand. C. O. No. 115 of vol. 2; and No. 7 of vol. 3, para. 6.

Session judge to report if he is unable to hold the sessions.

744. The several commissioners, in whose divisions the provisions of this regulation may be partially introduced, are also required to try the commitments that may be made by the magistrates of those districts, the session duties of which may be reserved to them, as soon after the commitments are made as may be practicable, consistently with the due performance of their other duties. Reg. VII. 1831. sect. 13, cl. 3.

If the session duties are reserved to the commissioner.

Cases in which previously concerned.

745. No session judge, whether fully appointed or officiating, is on any account to preside at the trial of any case in which the prisoner or prisoners have been committed for trial by himself in his capacity of superintendent of police, magistrate, joint-magistrate, or assistant-magistrate. In all such cases the trial is to be postponed until it can be brought before another judge, or person appointed to officiate as such; and a report of the case is to be made to the Nizamut Adawlut, who are to determine what provision is to be made for the immediate trial of the case. Reg. IV. 1823. sect. 6.

Session judge is not to try commitments made by himself;

746. In a case of murder in a foreign territory, it appeared that the commissioner, who tried the prisoner, was the officer who had originally applied to government for permission to commit him for trial on the above charge, although he was not actually the committing magistrate. The Nizamut Adawlut were unanimously of opinion, that the proceedings held on the trial were virtually in contravention of the law, and accordingly quashed them, and ordered the prisoners to be tried *de novo* by a competent officer. N. A. R. vol. 3, page 334.

nor if he has been previously concerned in the case;

747. No session judge is to take cognizance of appeals against decisions, or orders, passed by himself in the capacity of magistrate, joint-magistrate, or assistant-magistrate, or in any other capacity. Reg. XXV. 1814. sect. 12, cl. 4.

nor to try appeals from his decisions;

748. A session judge, having previously as magistrate committed several persons in a case, was informed that he should not try another prisoner implicated in the same case in his own magisterial proceedings, but subsequently apprehended and committed by another officer. Const. Nos. 685 and 686.

nor if he has previously committed others in the same case;

749. A session judge is not competent to try a person committed for trial by himself in his capacity of civil judge. Const. No. 691. C. O. No. 169 of vol. 2.

nor if he has committed the prisoner as civil judge.

But may try, if he made over the case as civil judge to the magistrate, and the latter has committed on his own discretion.

750. A session judge is competent to try a prisoner committed by a magistrate on his own discretion, in a case sent to the magistrate by the judge, in his civil capacity, to commit or otherwise dispose of as he might think proper. Const. No. 975.

So, the appeal, if he as civil judge made over the case to the magistrate to be punished or not at the discretion of the latter.

751. A judge in his civil capacity made over a person to the magistrate for resistance to a process issued from the civil court; the magistrate convicted and punished him, and he appealed. The session judge declined to receive the appeal on the ground that he was a party concerned; but it was held by the Nizamut Adawlut that as the order of the magistrate was passed on a regular criminal trial, the appeal must under the existing law be heard by the session judge. Const. No. 1033.

When the judge from the above reasons cannot try a commitment, he is to report to government.

752. Whenever a session judge is prevented from taking up a case, which has occurred within his jurisdiction, in consequence of his having made the commitment as civil judge or magistrate, or from any other cause, he is immediately to report the circumstance to government, with a view to such special provision being made for the trial of the case as may be deemed proper. He is, at the same time, to state to which of the neighbouring tribunals the case in question could be most conveniently referred, with advertence to the residence of the parties concerned. C. O. No. 17 of vol. 3.

Miscellaneous rules.

How far the sessions court may be closed in the vacations.

753. The trial of such cases, as have been committed and ready for trial previous to the commencement of the Dusserah or the Mohurrum vacation, should be completed although the vacation supervenes in the course of it. And, during those vacations, the court ought never to be closed for the despatch of criminal business, except on those days only, when a total cessation from all business is necessary and usual. C. O. No. 141 of vol. 2; and No. 8 of vol. 3.

Duties on which the judge may employ his head clerk.

754. The judges are empowered, at their discretion, to employ their head clerks in the following duties:—attesting copies of decrees and other documents granted to parties on stampt or plain paper under the judge's orders:—attesting copies of proceedings sent to the local authorities, and to other districts, under the judge's orders: registering in English the mokhtarnamahs, and preparing them for the judge's attestation. But the head clerk, when entrusted with such duties at the discretion of the judge, is never to attach his signature to any document without its correctness having been previously attested and certified by the head ministerial native of the judge's court. C. O. No. 91 of vol. 3.

Applications for leave of absence to be accompanied by report of business pending.

755. Judges applying for leave of absence are enjoined strictly to conform to C. O. S. D. A., dated January 4th, 1811, which requires that every application for leave of absence should be accompanied by a statement of business, pending before the officer making it, in all departments. C. O. No. 202 of vol. 2.

Before going on leave to prepare the monthly statements.

756. Session judges are always, before availing themselves of leave of absence, to prepare the statements of prisoners punished without reference or acquitted by themselves, filling up the columns of explanation and remarks: or they are to furnish the officer in charge of the office with a certificate of the cause of their inability to do so, to be submitted with the statements. C. O. No. 193 of vol. 2.

757. A deceased judge having left a decision unsigned, his successor was directed to examine the vakeels of the parties in whose presence the decision was given, and the person who wrote it out, and compare it with any note in the handwriting of the late judge which might be forthcoming; and, unless the result of the enquiry should lead him to doubt the genuineness of the decision, to sign it, making a short memorandum explaining why it was signed by him. Const. No. 910.

Roobakuree left unsigned by deceased judge.

758. Whenever a session judge makes over charge of his office to an officer not authorized to act as judge; he is to call the particular attention of the latter to the following rule, and to certify that he has done so in his letter, reporting the fact to the nizamut adawlut. Whenever the charge of the current duties of session judge, from death, indisposition, or other casualty, devolves to the assistant attached to the court; or whenever an assistant, or other covenanted European officer, by the orders of a competent authority, takes charge of the current duties of the office of session judge, (not being vested by government with the full power of judge) such officer is to confine himself to the exercise of such part of the powers of judge as may be indispensably necessary for the immediate execution of processes or orders of the nizamut adawlut, for the issue of warrants under sentences of that court, making returns to such warrants, and the transmission to the court of the proceedings in criminal trials, for the execution of the processes from other courts, or for such other cases of emergency as will not admit of delay. The officer in charge will likewise cause to be prepared and forwarded any statement or reports which the judge may, under the rules in force, be required to submit to the nizamut adawlut, or to government. C. O. No. 159 of vol. 2.

Officer in charge of current duties.

Powers and duties.

759. On receipt of a petition for staying execution of any order of a magistrate, against which an appeal has been lodged, the officer holding temporary charge of the session judge's office is immediately to transmit a copy thereof, with a proceeding, to the magistrate's court, in order that that officer, being made acquainted with the purport of such application, may have the opportunity of exercising his discretion in regard to the suspension of his order appealed against, either with or without taking security, until the appeal can be brought to a hearing before the session judge. C. O. No. 38 of vol. 3.

In case of an appeal from the order of a magistrate.

760. Officers in charge of the current duties may exercise the power of granting leave of absence for a limited term, and when urgently required in cases of emergency not admitting of delay, to the vakeels of the court, and generally to the amlah of the judge's establishment. Const. No. 1242.

Power to grant leave of absence.

SECTION XXI.

OF THE SESSIONS

General rules.

The importance of matters of form

761. Matters of mere form, when connected with a criminal trial on which the character, liberty, and often the life of an individual depends, assume a degree of importance, which, on a superficial view of the subject, they might not appear to possess. The circular orders contain clear and compendious directions on the mode of conducting trials, and a strict adherence to them is deemed essential. C. O. No. 135 of vol. 2.

Mode of distinguishing trials,

762. Each trial is to be distinguished by the month in which it is held. In districts to which Reg. VII. 1831 has been extended[a] the magistrates are to keep separate calendars for each month, entering the trials thereon in regular order. The heading of trials to be prefixed to the record in both English and Persian should therefore be as follows:

"COURT OF THE SESSION JUDGE OF ZILLAH ————.
"Trial No. 1 of the sessions for the month of ————, 184 —.
"Case No. 3 of the magistrate's calendar for the month of ————, 184 —.

رویداد تجویر عدالت سیسن ضلع فلان مقام فلان باجلاس فلان صاحب سیسن جج و روبروی فلان مولوي عدالت[b] مقدمه نمبر فلان بابت سیسن ماه فلان مطابق نمبر فلان کلندره صاحب مجسترت بابت ماه فلان[c]

and sessions statements.

The monthly statements connected with the sessions should, in like manner, be designated by the month, in which the trials entered in them were concluded by sentence or postponed. C. O. No. 108 of vol. 2; and No. 186 of vol. 1.

Sessions must be held in the established court house

763. The trial of a prisoner having been held in the jail on account of her approaching confinement, the proceedings were quashed, and the session judge was directed to try her *de novo* in the established court house, as soon as she should be sufficiently recovered. N. A. R. vol. 6, page 33.

More than one trial not to be held at once

764. The practice of holding more than one trial at the same time is prohibited, as wholly unauthorized by the regulations. C. O. No. 125 of vol. 1.

Trials on distinct charges to be kept separate.

765. The trials of prisoners upon distinct charges, especially when the prosecutors are also distinct, should as far as possible be kept separate by the magistrate and the session judge. C. O. No. 2 of vol. 1.

(a) That is, zillahs in which the duties of the sessions are conducted by a judge, instead of a commissioner of circuit.

(b) In cases tried under Reg. VI. 1832, with the aid of punchaets, assessors, or jurors, the names and designations of such persons employed should be entered in lieu of the Mahomedan law officer. *Note to printed circular.*

(c) The use of the Persian language having been abolished, Urdu or Bengallee must now be substituted.

766. The proceedings on all criminal trials are to be written in a clear legible hand on paper 12½ inches by 9½, or as nearly that size as may be procurable; a numerical list of the papers, corresponding with the marginal notes of the record, is to be prefixed, and the whole closed by adding an extract from the magistrate's vernacular calendar relating to the case. The nuthee, or bundle of papers composing the trial, is to be firmly connected by a string or tape, passed through the papers on the right hand side towards the top, the ends of which are to be united with wax, and the seal of the court impressed thereon. C. O. No. 54 of vol. 2, para. 2.

Proceedings How to be written and filed,

767. The papers forming the record of the trial are to be entered thereon, in the same order as the proceedings are held, a marginal note being made on each separate paper, descriptive of its nature, and corresponding with the numerical list above-mentioned. The record is to be headed *mutatis mutandis* as set forth in the given form,* including a transcript in English and the vernacular of the charge on which the accused is put on his trial, as directed in the final order of commitment. C. O. No. 54 of vol. 2, para. 3.

and how to be arranged.

* *v. Appendix C, No.* 10.

768. Session judges are to pay particular attention to the orders above cited, and to impress upon the officers of their courts, that the additional degree of labor incident to a more careful arrangement of the papers in each case is trifling in comparison with the objects contemplated; and is only increased by carelessness in the first instance, as in such cases it is found necessary to return the whole proceedings for amendment. The judge should himself carefully examine each case previous to submitting it to the court. C. O. No. 100 of vol. 2.

Judges to pay particular attention to the above rules

769. In cases of murder, wounding, or other personal injury, a description of the weapon, or other instrument, said to have been used in the perpetration of the act, should be here recorded; including, where such particulars are at all available to fix the intent of the prisoner, the length of the instrument, its general form if not one in common use, its thickness, and weight. C. O. No. 54 of vol. 2, para. 4.

Description of the weapon in cases of personal injury.

770. In cases of robbery or theft a description should be entered of any articles laid before the court, as forming part of the plundered or stolen property; specifying the number attached to each article, and where, and under what circumstances it may have been found. C. O. No. 54 of vol. 2, para 5.

Description of stolen property recovered;

771. The number of each article is to be according to that affixed to it in the chellaun, which the police darogah is required to transmit to the magistrate by cl. 2, sect. 16, Reg. XX. 1817. Police officers are to be careful in affixing such numbers, and magistrates are invariably in their proceedings to describe and number the property according to the same chellaun. C. O. No. 276 of vol. 1.

and each article to be numbered

772. The proceedings on the trial of prisoners are to be conducted in the following manner. The charge against the prisoner, his confession (which is always to be received with circumspection and tenderness) if he plead guilty; or, if he plead not guilty, the evidence on the part of the prosecutor, the prisoner's defence, and any evidence which he may have to adduce; are to be heard before the law officer, who is to be present during the whole of the trial. *Beng.* Reg. IX. 1793. sect. 47. *Ced. Prov.* Reg. VII. 1803. sect. 15, cl. 1.

Order to be observed in the conduct of proceedings.

Order to be kept strictly.

773. The session judge is to observe strictly the order of proceeding pointed out in the above provision: viz. the charge against the prisoner; his confession or denial; the evidence on the part of the prosecutor; the prisoner's defence; and any evidence he may have to adduce in support thereof. C. O. No. 19 of vol. 1.

Prisoner not to be examined, nor his previous confessions recorded, till after the close of the case for the prosecution.

774. It is irregular in the session judge to enter upon an examination of the prisoner, touching confessions stated to have been previously made by him, or other matters, immediately after receiving the charge from the prosecutor. He should confine himself, in the first instance, to taking from the prisoner a plain answer of guilty or not guilty, and then proceed to the examination of the witnesses who are summoned in support of the facts charged against the prisoner; after which, and not before, any confession stated to have been made by the prisoner should be recorded on the proceedings. C. O. No. 193 of vol. 1.

Prosecutor's statement.

Prisoner's plea.

Evidence for prosecution.

Certain papers to be filed in original with translations.

775. After the papers above noted, there will follow the prosecutor's deposition; the prisoner's plea of "guilty" or "not guilty" to the charge (which should always be explicitly stated to him in the words prefixed to the record); and then the evidence on the part of the prosecution, in the course of which, if any papers borne on the magistrate's proceedings form part of the proof, as written confessions, inquests, declaration of a dying person and the like, such papers should be entered on the record of trial in original, and evidence taken thereto; attested copies being substituted in their stead on the magistrate's proceedings. Translations are to be made and annexed to the originals, where the latter are written in a peculiar or corrupt dialect. C. O. No. 54 of vol. 2, para. 6. C. O. No. 26 of vol. 3, para. 4.

Prisoner's plea to charge.

776. After the deposition of the prosecutor, the prisoner is to be called on to plead "guilty" or "not guilty" to the charge; the nature of the charge having been distinctly explained to him in this stage of the proceedings, no further questions should be addressed to the prisoner. C. O. No. 129 of vol. 2.

Charge to be stated exactly.

777. In calling on the prisoner to plead, the judge should be careful that the question addressed to him corresponds exactly with the written charge; and where more than one prisoner are included in a case, the question should be addressed, separately and distinctly, to each by the judge himself. C. O. No. 135 of vol. 2.

Importance of being exact.

778. When the session judge, in calling upon a prisoner to plead, omitted to state to him that part of the charge which denoted the aggravating circumstances of the crime, it was held that the prisoner could not be convicted of that part of the charge, to which he was not called on to plead. N. A. R. vol. 5, page 162.

If plea of guilty, trial to proceed.

779. Although the prisoner pleads "guilty," the court should proceed in the trial in the ordinary course. Const. No. 650.

Deposition of surgeon.

Written statements must be supported by evidence.

780. In cases of murder, or wounding endangering life, when the body or wound has been inspected by the civil surgeon (as it should be in all practicable cases), the deposition of the surgeon should be invariably taken on oath, instead of merely requiring a written report addressed to the magistrate or judge: and it may be here observed, generally, that no report or paper should be placed on the record, or referred to in *proof* of the charge, unless the same be established by evidence. C. O. No. 54 of vol. 2, para. 7.

781. In a case in which certain prisoners were committed on a charge of being accomplices in a crime, of which some of their associates had been previously convicted, the session judge proceeded entirely upon the record of the former trial. This was held to be insufficient, because the former proceedings, so far as these prisoners were concerned, were *exparte*. All the facts should be proved in the presence of the prisoners, before they are called on to make a defence. The proceedings were quashed, and the judge was directed to proceed *de novo*. N. A. R. vol. 5, page 17.

Facts given in evidence must be proved in the presence of the prisoners.

782. The evidence of witnesses for the prosecution in a criminal trial cannot be taken in the absence of the accused, even in proof of his confession. Const. No. 658. N. A. R. vol. 1, page 300.

783. The session judge is to be careful to notice on his proceedings any material differences between the depositions of the same witnesses before him, and the magistrate, and is to question the witnesses thereupon, and to record their answers; but the depositions taken before the magistrate are not to be read before the sessions court in the presence of the persons who gave the same, until they have been re-examined before the sessions court. *Beng.* and *Ben.* Reg. IV. 1797. sect. 7, cl. 7. *Ced. Prov.* Reg. VII. 1803. sect. 18, cl. 6.

Judge to notice discrepancies in the depositions of the same witness.

Foujdaree deposition is not to be read before the witness has given evidence.

784. It is the duty of the judge to record in the proceedings any such contradiction, whether in the evidence of the witness on trial, or as compared with his former deposition before the magistrate. C. O No. 54 of vol. 2, para. 12.

DEFENCE.

785. The prisoner is not to be called upon for his final defence, until something has been established against him, of which it is necessary that he should furnish a refutation. N. A. R. vol. 2, page 454.

Prisoner cannot be called upon for defence, until the crime charged is proved.

786. If the evidence for the prosecution is, in the opinion of the session judge and law officer, clearly insufficient to prove the charge against the prisoner, it would be superfluous to proceed with the defence. If, on the other hand, the witnesses for the prosecution should make any statement, which, supposing it to be credited, might tend to inculpate or criminate the accused person, the trial must be completed in the ordinary way. Const. Nos. 1256, and 1267.

If evidence for prosecution is insufficient, proceedings to be closed at once.

787. It is not within the competence of a judge to decline putting a prisoner on his defence, and taking a futwa from his law officer regarding him, on account of his extreme youth, or other cause. N. A. R. vol. 2, page 310.

But judge must take defence, if the charge is proved.

788. After the close of the evidence for the prosecution, the prisoner is to be called upon for his defence; no questions being addressed to him beyond those necessary to elucidate his meaning, and everything of the nature of an examination, especially such questions as might lead him to criminate himself, being carefully avoided. And evidence is then to be examined on his behalf. C. O. No. 129 of vol. 2; and 54 of vol. 2, para. 8.

Prisoner is not to be examined so as to criminate himself.

789. It is irregular in a session judge to cross-question a prisoner on trial, after taking his defence, with a view of drawing from him answers which might have a tendency to convict him. N. A. R. vol. 2, pages 7, and 220.

790. It is irregular in a session judge to enter into any examination of a prisoner as to his confession, beyond his simple avowal or denial of the same. N. A. R. vol. 2, page 185.

Nor cross-questioned as to former confession.

Witness for defence must be examined.

791. The judge cannot decline to examine the witnesses of the defendant, of whatever nature their evidence may be, and although he attaches no weight to their testimony. N. A. R. vol. 6, page 12.

Witnesses for the prosecution may be re-examined for defence.

792. It is irregular not to hear witnesses for the defence, on the ground that they have been already heard for the prosecution, as it is clearly at the option of the prisoner to delay putting any questions to them until his own defence has been completed, in order to support which he names such witnesses. N. A. R. vol. 2, page 37; vol. 4, page 228.

In what cases the personal attendance of the accused may be excused.

793. Upon general principles, the fitness of requiring the actual personal attendance of the accused in the great majority of cases, which fall under the cognizance of the session courts, is obvious: but in less serious cases circumstances may exist to warrant exception to the rule. If, for example, the accused is a female, who, according to the usages and prejudices of the country, could not with propriety personally attend a court of justice, her personal attendance might be very properly dispensed with. But in the event of a doubt on this point, the question should be referred to the law officer under sect. 54, Reg. IX. 1793.* If the law officer declare the accused warranted by the Mahomedan law, in his application to have his personal attendance dispensed with, the judge should proceed with the trial. On the other hand, if he declare the accused not entitled to the indulgence, or that the determination of the point rests with the judge, as the judiciary delegate of the sovereign, it would be competent to the judge to admit or reject the application as might be deemed just and consistent with proper principle. Const. No. 137.

* *v* ¶ 871.

Parentage of a Christian prisoner to be noted.

794. Whenever a Christian is tried, his parentage and place of birth are to be stated distinctly in the jail delivery statements, or in the letter of reference if the case is referred to the Nizamut Adawlut. C. O. No. 113 of vol. 2.

Prisoners are to be referred to by their names throughout.

795. Prisoners are always to be referred to in the depositions of witnesses, and in the futwas of the law officers, by their names, and not by the numbers they bear in the calendar. C. O. No. 216 of vol. 3.

Prisoners tried under false names.

796. When prisoners have been tried under false names, but their real names are discovered before the completion of the trial, the judge should designate them in the warrant by the names under which they were arraigned and pleaded, adding their since-discovered real names by an *alias*. Const. No. 1034.

Uniformity to be observed in spelling the names of prisoners; and father's name to be added, if 2 prisoners bear the same name.

797. Particular attention should be paid to correctness and uniformity in the manner of spelling the names of prisoners in the record of evidence. Where several prisoners bearing the same or similar names are included in one trial, care should be taken, in recording the evidence given by each witness, to specify the name of the father of the person alluded to, whenever the name of any one of them is mentioned. C. O. No. 135 of vol. 2.

Orthography of native names.

798. In writing the native names of men and places, the orthography of the original is to be adhered to as closely as possible. C. O. No. 104 of vol. 2.

SENTENCE

After all proceedings held, the law officer is to record the futwa, and the judge to pass sent-

799. After all the evidence for the prosecution and defence has been heard, the law officer (who is to be present during the whole of the trial) is to write at the end of the record of the proceedings the futwa or law as applicable to the circumstances of the case, and to attest it with his seal or signature. The judge is attentively to consider such futwa, and if

it appears to him consonant to natural justice, and also conformable to the Mahomedan law, he is to pass sentence in the terms of the futwa (except in cases in which he is expressly directed not to pass sentence), and to issue his warrant to the magistrate for the execution of it without further reference or delay. Provided, however, that in all cases where a prisoner is condemned by such sentence to suffer death, or imprisonment for life, the court is to transmit a copy of the sentence, and of all the papers and proceedings read or recorded during the trial, to the Nizamut Adawlut, and is not to execute such sentence, but is to wait the final sentence of that court. *Beng.* Reg. IX. 1793. sect. 47. *Ced. Prov.* Reg. VII. 1803. sect. 15, cl. 1.

ence, and in certain cases to refer.

800. In cases where there are several prisoners, and the evidence regarding some of them is completed, but it is necessary to postpone the case in the absence of witnesses summoned on the part of the other prisoners; the judge is competent to exercise his discretion in concluding the trial of the prisoners whose cases are completed, and passing sentence on them, postponing a final decision on that part of the trial only, which affects the prisoners for whom further evidence is required. C. O. No. 302 of vol. 1.

Trial may be completed in regard to some, and postponed as to others of the prisoners.

801. The evidence of certain witnesses for the prosecution having been taken after the prisoner's defence, without his having been called on for a further defence as regarded such testimony, the Nizamut Adawlut held that the proceedings were informal, and they were returned that the omission might be supplied. N. A. R. vol. 1, page 245; vol. 2, page 481.

If further evidence is taken after close of defence, prisoner may make further defence.

802. It is illegal to take further evidence on the part of the prosecution after closing the proceedings and taking a futwa from the law officer. N. A. R. vol. 2, page 404.

But further evidence cannot be taken after the futwa is recorded.

803. After the proceedings in a case were closed, and the assessors had delivered a verdict of guilty against one of the prisoners, "unless he could establish his defence," the session judge, instead of directing them to reconsider their verdict, with reference to the irregularity of the finding, postponed the case, took fresh evidence, and called on the assessors to give a fresh verdict regarding this prisoner, who was then found guilty by them. These proceedings were characterized by the court as utterly illegal and irregular; and considering such irregularity fatal to the conviction, they directed the release of the prisoner. If the judge had referred the case under the first verdict of the assessors, the court would have rectified the irregularity by directing him to call upon the assessors for an unconditional verdict; or, setting aside the verdict altogether, would have instructed him to complete the proceedings by taking the further evidence. But as he sent up the proceedings completed, the court considered themselves bound to pass sentence. N. A. R. vol. 5, page 38.

Nor after the jury have given in their verdict, without the authority of the nizamut adawlut.

804. After the completion of a trial by the session judge, and the reference of the case to the Nizamut Adawlut, further evidence was submitted by the magistrate calculated to change entirely the features of the case in favor of the prisoner. The court held that it was not necessary to quash the trial; but, cancelling the futwa of the lower court, they directed the session judge to proceed with the case, by taking the fresh evidence, calling upon the prisoner for a fresh defence, and the law officer for another futwa, and disposing of the trial on its merits, as exhibited by the result of the further enquiry. N. A. R. vol. 5, page 40.

The nizamut adawlut admitted further evidence, after the reference of the case, by cancelling the futwa.

Conditional sentence of acquittal cannot be passed.

805. A conditional sentence of acquittal cannot be passed, so as to render the prisoner liable to a second trial in the event of further evidence being procurable. N. A. R. vol. 5, page 25.

Conviction as accessary may be had on commitment as principal; and of less on graver charge; but not of graver on less.

Example.

806. A prisoner may be convicted as an accessary when arraigned as a principal; or of a less offence, when under arraignment for a greater of the same nature and founded on the same facts; but not if the crime established be totally unconnected with that charged against the prisoner. Nor can a conviction of a graver offence be had upon a charge of a less heinous nature; as, when a prisoner had been committed on a charge of "severe wounding," it was held that he could not be convicted of "wounding with intent to murder"; and in this case the court, being of opinion that he ought to have been committed on the latter charge, annulled the former commitment and proceedings on the trial, and ordered him to be committed and tried *de novo* for the offence of "wounding with intent to murder." N. A. R. vol. 1, page 257; and vol. 4, page 59.

So, a conviction of murder cannot be had upon a charge of manslaughter.

807. So, when the term used in the indictment was *hulakut*, or homicide; and the offence charged was described as manslaughter in the margin of the letter of reference; and it appeared that the prisoner had been irregularly tried on a charge of murder, of which offence the judge deemed him convicted; the proceedings were returned with directions that the trial should be held in the mode prescribed for that offence, and that a fresh answer should be taken from the prisoner as to the murderous intent charged, and a fresh futwa from the law officer as to that point. It was not considered necessary to take any new evidence for the prosecution; but the prisoner was permitted to summon any other witnesses in his own defence. N. A. R. vol. 3, page 188.

So, in no case can a prisoner be convicted of a crime, to the charge of which he has not pleaded.

808. The same principle, viz. that a prisoner cannot be convicted of a crime with which he was not charged, and to which therefore he has not pleaded, although the conviction was founded on the same transaction as that which gave rise to the charge, was acknowledged in the cases of prisoners charged—with forgery, and convicted of fraud;—with murder, and convicted of conspiracy;—with procuring abortion, and convicted of causing the death of her infant by exposure;—with fraud, and convicted of embezzlement;—with theft attended with severe wounding, and convicted of affray;—with culpable homicide, and convicted of being an accomplice in an affray;—with murder, and convicted of theft attended with murder. So, when a session judge, in calling upon a prisoner to plead, omitted to state to him that part of the charge which denoted the aggravating circumstances of the crime, it was held that the prisoner could be convicted only of that part of the charge to which he was called on to plead. N. A. R. vol. 2, page 50; vol. 3, pages 50, 56, and 234; vol. 4, page 246; vol. 5, pages 28, 53, and 162.

Neglect of magistrate to obey the requisition of judge.

809. If the magistrate has neglected to obey any requisition, which the judge has made to him as being necessary to the due conduct of any pending trial, the judge is at liberty to represent the circumstance to the Nizamut Adawlut, either in the remarks on the statements of convictions or acquittals, or in a separate letter. Reg. VII. 1831. sect. 9.

Misconduct of police.

810. In like manner, should the judge, in the conduct of a trial, see reason to impute misconduct to any darogah or other subordinate police officer, he is at liberty to certify the same to the commissioner of circuit, for such orders as the latter may deem necessary,

intimating to the Nizamut Adawlut his having made such reference to enable that court to require from the commissioner, should they think proper, a report of what he may have done in pursuance of the reference, and to make a special report on the subject to government, should the circumstances of the case seem to require it. Reg. VII. 1831. sect. 10.

811. It is competent to a session judge to fine an officer of the magistrate's establishment guilty of negligence or disrespect while in attendance at the sessions. Const. No. 882.

Judge may punish the magistrate's omlah.

812. The session judge is not to retain the proceedings of the magistrate in trials committed to the sessions, except in particular cases, in which such measure appears essentially necessary, when he may either detain the original proceedings, or require copies. C. O. No. 61 of vol. 1.

Proceedings of magistrate to be returned.

813. If, in particular cases of trials committed to the sessions, any special grounds exist rendering it desirable, in the opinion of the magistrate, that he should see any part of the evidence which has been taken before the sessions court, either to enable him to follow up his enquiries in the case, or for any other purpose connected with the administration of criminal justice, or of the police of his district, he should state those grounds fully in a report to the session judge, who, on a consideration thereof, will determine on the propriety or otherwise of complying with the application, either by transmitting for the magistrate's perusal transcripts of the depositions required by that officer, or by allowing an officer from his court to attend for the purpose of taking copies of the same. C. O. No. 5 of vol. 3.

If the magistrate wishes to see the evidence taken before the sessions court.

Sufficiency of ground of commitment.

814. In cases of acquittal, the judge is required to specify in that column of the statement of acquittals appropriated to remarks, whether he deems the commitment to have been made on sufficient grounds, and after due inquiry into the case by the magistrate; or whether he considers it to have been erroneous or defective: and, in the latter case, he is distinctly and fully to detail the ground on which he has come to such conclusion, mentioning the name of the committing officer. He is not, however, to communicate his sentiments to such officer; but should leave it to the Nizamut Adawlut to point out such cases as really call for notice. C. O. Nos. 24, 156, and 168 of vol. 2.

Judge to record his opinion;

but not to communicate it to the magistrate.

815. In such cases, when the commitment appears to have been made on inadequate grounds, and when the proceedings of the magistrate in making the commitment appear to merit the particular notice of the Nizamut Adawlut, a copy of the magistrate's roobakaree of commitment, written upon foolscap paper of English manufacture, is to be forwarded with the usual sessions statements. C. O. No. 24 of vol. 2; and Nos. 36, 50, and 57 of vol. 3.

If proceedings of magistrate require notice, copy of roobakaree of commitment to be sent.

816. It is also the duty of the session judge to bring to the notice of the Nizamut Adawlut any irregularities, which may have marked the conduct of the proceedings in the preliminary investigation of the magistrate or the police. C. O. No. 54 of vol. 2, para. 12.

Judge to notice irregularities.

Copies of futwa.

817. In all cases of prisoners punished or acquitted without reference, copies of the futwas are to be furnished to the Nizamut Adawlut. They are to be filed in two separate parcels, in the order in which the prisoners affected by them stand on the statements of prisoners punished without reference and acquitted; and on the face of each futwa a memorandum is to be written in the vernacular, showing the names of the prisoners, their numbers as they stood in the magistrate's calendar, and their numbers in the respective statements of

In cases completed without reference, copies of futwas are to be forwarded monthly to the nizamut adawlut.

convictions and acquittals, according to the forms given below.(a) The specific charge, upon which the prisoner has been committed to take his trial, is also to be noted upon the copy of the futwa; the charge is to be taken from the magistrate's roobakaree of commitment, without any alteration, and written upon the face of the futwa in the same language as the original. If in one case some of the prisoners are acquitted, and some convicted, a copy of the futwa is to be filed with each parcel. C. O. Nos. 263 and 283, of vol. 1; No. 78 of vol. 2; and No. 25 of vol. 3.

Such copies to be written on English foolscap.

818. Copies of futwas and verdicts of assessors, or copies of the magistrate's roobakarees of commitments, forwarded with the monthly session statements, are to be written upon foolscap paper of English manufacture. C. O. No. 50 of vol. 3.

Trials held without law officer.

Futwa may be dispensed with by order of government.

819. Whenever there appears to be sufficient cause for dispensing with the attendance and futwa of the law officer of the session court upon a criminal trial, or trials, to be held before such court, it is competent to the executive government for the time being to order the same; and an official communication of such order by a secretary to government is to be deemed sufficient authority for the trial, or trials, therein referred to being held before the session judge without the attendance or futwa of the law officer. Reg. I. 1810. sect. 2.

In such cases, trial to be referred without sentence.

820. In such cases no sentence is to be passed by the session judge. But the proceedings on the trial, when completed, are to be transmitted, with the opinion of the judge on the evidence, and facts established, for the sentence of the Nizamut Adawlut. Reg. I. 1810. sect. 3.

Questions of Mahomedan law in such cases.

821. In the event of any question of Mahomedan law arising upon such trials, the same is to be recorded upon the proceedings for the information and decision of the Nizamut Adawlut. But if the question refer to the competency of a witness, such witness is to be examined, leaving the admission or ultimate rejection of the testimony so given to the consideration of the Nizamut Adawlut. Reg. I. 1810. sect. 4.

Authority for holding trial out of ordinary course to be recorded.

822. In all cases of trials held in any way out of the ordinary course of law, the judge is to record on the proceedings of the trial the original documents authorizing the course adopted (substituting attested copies in their place in the magistrate's nuthee, if they are taken therefrom); and he is invariably to notice the same in his letter accompanying the proceedings on the trial, if referred to the Nizamut Adawlut. C. O. No. 54 of vol. 2, para. 23.

(a) Form of the memorandum for futwas of conviction.

نمبر فلان کلندره ضلع فلان
بابت دوره فلان سنه فلان
نام اثامیان

نمبر اثامیان در فهرست اثامیان
که بموجب حکم صاحب دوره سزا یافتند
نمبر فلان

Form of the memorandum for futwas of acquittal.

نمبر فلان کلندره ضلع فلان
بابت دوره فلان سنه فلان
نام اثامیان

نمبر اثامیان در فهرست اثامیان
که بموجب حکم صاحب دوره رهائي یافتند
نمبر فلان

823. It is competent to any court of criminal justice, in which a commissioner of circuit or judge of sessions presides, without the necessity of any special authority from government to avail itself of the assistance of respectable natives in either of the three following ways:

Session judge may avail himself of the assistance of natives as

First, by referring the case, or any point or points in the same, to a punchaet of such persons, who are to carry on their inquiries apart from the court, and report to it the result. The reference to the punchaet and its answer are to be in writing, and are to be filed in the case.

a punchaet,

Secondly, by constituting two or more such persons assessors, or members of the court, with a view to the advantages derivable from their observations, particularly in the examination of witnesses. The opinion of each assessor is to be given separately, and discussed; and if any of the assessors, or the authority presiding in the court, desires it, the opinions of the assessors are to be recorded in writing in the case.

or assessors,

Or thirdly, by employing them more nearly as a jury. They are then to attend during the trial of the case; to suggest as it proceeds such points of inquiry as occur to them, the court, if no objection exists, using every endeavour to procure the required information; and after consultation to deliver in their verdict. The mode of selecting the jurors, the number to be employed, and the manner in which their verdict is to be delivered, are left to the discretion of the judge who presides.

or a jury.

In all trials in which recourse is had to the above provisions, the futwa of the Mahomedan law officer is unnecessary, and may be dispensed with at the option of the court. Provided, that whenever the futwa is dispensed with, and the crime of which the prisoner is convicted be one, which the judge is not specifically empowered by the regulations to punish, he is not to proceed to pass sentence, but is to refer the case for the consideration of the Nizamut Adawlut, stating at length in the proceedings the opinion of the punchaet, assessors, or jury, and his own opinion as to the crime proved, and the nature and extent of the punishment which should be awarded. Reg. VI. 1832. sect. 4, cl. 1.

In such cases futwa need not be taken; but if not, and the crime is not specifically within the judge's competence, the case is to be referred.

824. It is clearly to be understood, that under all the modes of procedure prescribed above, the decision is vested exclusively in the officer presiding in the court, provided that the sentence be one which, under the existing regulations, it is within his competency to pass. Reg. VI. 1832. sect. 4, cl. 2.

But in all such cases the decision is vested in the judge.

825. The condition of reference to the court set forth in the above provisions, viz. the crime of which the prisoner is convicted being one which the judge is not specifically empowered by the regulations to punish, must be held to relate to the nature of the crime; and, since whatever is defined or specified in the regulations to be a crime is specifically punishable by the criminal courts, the session judge is therefore specifically empowered to punish such offences when brought before him in the due course of law. The real object of the legislature in enacting the above provision appears to have been to declare the incompetency of the sessions court, unassisted by a Mahomedan law officer, to declare that to be a crime which is not so declared by the regulations. The law professedly administered is the Mahomedan law, amended and modified by the regulations. Where the amendments are applicable, there can be no difficulty in disposing of trials; but, in the contrary event, an exposition of the Mahomedan law is necessary to pronounce whether the act of the prisoner is punishable or otherwise.

Explanation of the above as regards the condition of reference.

The session judge sitting with assessors has not the benefit of such exposition, and hence the necessity and propriety of a reference to the nizamut adawlut. C. O. No. 55 of vol. 3.

Any person, not a Mahomedan, may claim to be tried by a jury, &c.

826. Any person, not professing the Mahomedan faith, when brought to trial on a commitment for an offence cognizable under the general regulations, may claim to be exempted from trial under the provisions of the Mahomedan criminal code; and in such case the commissioner of circuit, or judge of sessions, presiding on the trial shall comply with such requisition, and shall proceed in one of the three modes prescribed above, at the same time dispensing with the futwa of the Mahomedan law officer. Reg. VI. 1832. sect. 5.

Trials involving religious prejudices to be tried by a jury.

827. Trials, in which the religious prejudices of Mahomedans or any other class are concerned, ought in all possible cases to be conducted without the Mahomedan law officer, and with the assistance of a jury under the above provisions. A futwa on any point of Mahomedan law may, if necessary, be required without the attendance of the law officer on the trial. C. O. No. 181 of vol. 2.

If judge differs from assessors, case need not be referred.

828. A difference of opinion between the presiding officer and the jury or assessors does not render a reference to the nizamut adawlut necessary; but the presiding officer is competent and required to pass final sentence under such difference of opinion under the same restrictions only as limit the issue of his sentence when he concurs in the verdict. Const. No. 783.

Case begun with law officer cannot be continued with assessors.

829. A trial having been commenced with the aid of the law officer, the judge cannot call in the aid of a punchaet. Const. No. 835.

In a postponed case if jurors cannot be re-assembled, new jurors to be appointed.

830. In the case of a postponed trial commenced before a jury, where it is impracticable from death or other cause to procure the attendance of all persons composing the jury, new jurors should be appointed in the room of those whose attendance cannot be procured; and the former evidence should be read over to them. Const. No. 828.

But they must hear the case *ab initio.*

831. But in a case in which the prisoner was tried on five different counts by assessors sitting with the session judge; and after the plea of the prisoner was recorded, and witnesses examined in support of the three first of them, the session judge called in other assessors in consequence of the illness and inability to attend of the assessors who first sat; and in which on the completion of the trial, the verdict on the three first counts was delivered by the first set of assessors, and on the remaining two counts by those who last sat; it was held that the employment of two different sets of assessors, under the circumstances, was illegal. N. A. R., vol. 5, page 87.

The services of natives in such capacity cannot be compelled.

832. No power is given to the judge by the above provisions to compel the attendance of persons, who are reluctant, voluntarily to render their services. He is empowered to invite the services of natives as arbitrators, assessors, or jurors, but by no means to compel them. There are always officers of respectability attached to the court, law officers, sudder ameens, or principal sudder ameens, who can be invited to act as assessors, and on whose part there can be no reasonable ground for declining compliance with such an invitation. C. O. No. 127 of vol. 2.

East Indians may serve as jurors.

833. An East Indian, who by reason of his descent is not a British subject within the meaning of the existing laws, is eligible to be employed as a juror or assessor on the trial of a native of India, whether of Hindoo or Mahomedan persuasion, or of persons belonging to the same class as himself. Const. No. 1019.

SECTION XXII.

OF POSTPONED TRIALS.

834. If the attendance of any witness on the part of the prosecutor or the prisoner, whose evidence the law does not allow to be taken by commission, cannot be procured, or if any witness cannot be found, the judge may postpone the trial (until the next circuit), provided there appears sufficient cause for so doing. If the attendance of such witness cannot then be procured, or if he has not been found, the judge may in like manner postpone the trial a second time. But if the judge and his law officer are of opinion that the evidence of any witness or witnesses, who are absent, is not necessary, they are to complete the trial without it. *Beng.* Reg. IX. 1793. sect. 49. *Ced. Prov.* Reg. VII. 1803. sect. 17.

Trial may be twice postponed for want of evidence.

835. As it may frequently occur, that a trial postponed by one judge for further evidence is concluded before another judge, it is incumbent on the former to record his reasons at large for directing the postponement, with the specific points on which further evidence is required, and any observations upon the credit of the witnesses already examined, or other remarks upon the evidence already taken, which may appear requisite for the information of the latter. C. O. No. 111 of vol. 1.

Judge to record his reasons for postponing.

836. When a trial is postponed, the cause of postponement should be entered on the proceedings. N. A. R. vol. 6, page 18.

Fact of postponement to be recorded.

837. There is no rule or order which requires that, in cases of the non-attendance of the prosecutor before the sessions court, the trial must be postponed for two successive sessions, and the prisoner not discharged until the prosecutor fails to attend at a third session. The provisions of the regulations above quoted are expressly applicable to witnesses only; and with regard to them a discretion is vested in the judge to postpone the trial or not, according as he and the law officer are of opinion that the evidence of the absent witnesses is necessary or otherwise. With regard to the case of absent prosecutors, for which there is no express rule in the regulations, a discretion should be exercised by the judge according to the nature and circumstances of each case: if both prosecutor and witnesses are absent from any cause which is not likely to prevent their attendance at a future period, the trial should be postponed, the magistrate being directed to adopt every practicable measure for causing their attendance, and the prisoner be admitted to bail, or kept in custody, as the judge under cl. 2, sect. 9, Reg. IX. 1807 may deem it proper to direct: but if there is no prospect of the future attendance of either prosecutor or witnesses in support of the prosecution, the prisoner should be acquitted, and discharged with or without security, as may appear proper, in consideration of the magistrate's proceedings on the commitment. If, however, the prosecutor only is absent, and his witnesses in attendance, the judge should instruct the magistrate to appoint some person on the part of government to conduct the prosecution.

Rules for procedure in the absence of the prosecutor, or of both the prosecutor and witnesses.

A judge on circuit may direct the removal of a trial with the prisoner, prosecutor, and witnesses, to another station of jail delivery, if he see urgent and special grounds for directing such mode of procedure. C. O. No. 199 of vol. 1. Const. Nos. 200, and 256.

Trial not to be postponed for more than six months.

838. No criminal trial is to be postponed by a session judge beyond the session of jail-delivery, which may be held next after the expiration of the period of six months from the date of commitment, except when, for special reasons, the session judge may be of opinion that it should be again postponed; when he will report the circumstances under which it has already been postponed, and the grounds on which he has formed his opinion, for the orders of the nizamut adawlut. C. O. No. 132 of vol. 2; and No. 98 of vol. 3, para. 45 of rules for session judges.

Judge on circuit to take up first the postponed cases; and to require from magistrate an explanation of the cause, if there is any delay.

839. At the commencement of each session the magistrate is to lay before the judge a statement of all cases, which have been referred back by the nizamut adawlut for further inquiry or information, as also all trials which have been postponed at the preceding session; and the judge is immediately to proceed on trials of this description, supposing of course the further investigation to have been completed by the magistrate, and the trials to be in every respect ready, in preference to the cases included in the magistrate's regular calendar, forwarding such as are referrible to the nizamut adawlut with the least practicable delay. If the magistrate has not held the further inquiry required, the judge is to call upon him for an explanation of the cause of delay; and in cases referred back by the nizamut, the magistrate's explanation with the judge's opinion of the sufficiency or otherwise of the same is to be forwarded for the information and orders of that court. A similar report is to be made in other cases, when the judge considers it necessary to bring the magistrate's conduct on the occasion under the notice of the court. C. O. Nos. 121, and 153 of vol. 1.

Suggestion for avoiding delay in the final disposal of cases.

840. A judge on circuit should, whenever practicable, try those cases first, which have had rise at the greatest distance from the sudder station, in order that whenever any more witnesses or inquiries are requisite to complete the trials, there may be time for a reference to the thanadar, before the nearer commitments are finished. C. O. No. 173 of vol. 1.

SECTION XXIII.

OF FUTWAS AND SENTENCES.

Futwa.

May be required from law officer though absent.

841. A futwa on any point of Mahomedan law may, if necessary, be required without the attendance of the law officer on the trial. C. O. No. 181 of vol. 2.

Magistrate may require in case of doubt.

842. In any case of doubt, when the regulations contain no specific enactment on the point in question, the magistrate should take a futwa from the law officer, and proceed in conformity with his exposition of the Mahomedan law. Const. No. 891.

843. It was considered highly improper and unjustifiable in a magistrate to direct the government pleader to communicate with the law officer, over whom in his capacity of law officer of a court of circuit he had no control, on a matter relating to a futwa delivered in a trial before the court of circuit. Const. No. 631.

The interference of the magistrate with futwas delivered before the sessions is improper.

844. Law officers are to be careful to specify in their futwas the crime, which they consider to be established against a prisoner declared liable to punishment, whether the conviction is founded on full legal proof, or on presumptive evidence; and to use the proper term, which has been appropriated in the Mahomedan law, or by usage, to designate the offence of which the prisoner is convicted. As, for instance, the crime of robbery should not be denominated *gharutguree*, as that is an ambiguous term which might be applied to acts of plundering distinct from robbery. C. O. Nos. 101 and 104 of vol. 1.

The law officer is to specify the crime of which the prisoner is convicted; and to use the proper term.

845. The judge should always require a more specific futwa from the law officer as to the nature and degree of *shoobuh* established against a prisoner, whenever the original futwa in the case is doubtfully expressed. C. O. No. 117 of vol. 1.

Law officer to specify the degree of presumption.

846. A futwa convicting upon strong presumption *(zun-i-ghalib* or *shoobuh-i-cuvvee)* is a futwa of conviction: and a session judge concurring in such conviction in a case of burglary or theft attended with murder, or wounding or corporal injury endangering life, must pass sentence of 39 stripes and imprisonment in transportation for life, and refer the trial to the nizamut adawlut, suspending the issue of his sentence. Const. No. 558.

A futwa of strong presumption is a futwa of conviction.

847. A law officer having declared in his futwa, as a ground for the acquittal of a prisoner, that he might have concealed his knowledge of a dacoity from fear, and that it was inexpedient to punish him, lest it should deter other offenders from giving information, the nizamut adawlut held that he had exceeded his duty, and that he should not have referred to matters having no connection with Mahomedan law. N. A. R. vol. 2, page 142.

Law officer may not refer to matters having no connection with Mahomedan law;

848. In a trial for perjury, it was held, that the futwa of the law officer, convicting the prisoners of different degrees of guilt and consequently awarding a different amount of punishment to each, was not objectionable on that score; neither was it impugnable on the ground of its specifying *tazeer* with *tusheer* as the nature of the penalty incurred, inasmuch as by the Mahomedan law *tusheer* forms part of the punishment of perjury. N. A. R. vol. 5, page 58.

but may define the different degrees of guilt of the prisoners; and the mode of punishment prescribed by Mahomedan law.

849. Under the Mahomedan law a futwa of death by *seasut* cannot be pronounced on any but a murderer, though some authorities recognize, in abstract terms, the right of the ruling power to extirpate evil doers generally. N. A. R. vol. 2, page 418.

A futwa of death by *seasut* cannot be pronounced on any but a murderer.

850. In all sentences of punishment passed by the session court, the judge is to transmit to the magistrate, with the warrant for the execution of the sentence, a copy of the futwa delivered by his law officer: and, in the case of sentences passed by the nizamut adawlut, a copy of the futwa of the law officers of that court. C. O. No. 185 of vol. 1.

Copy of futwa of conviction to be sent to magistrate.

851. The law officer of the sessions court is always to be furnished with a copy of any futwa delivered by the law officers of the nizamut adawlut in cases referred to that court. C. O. No. 101 of vol. 1.

Copy of futwa of law officers of nizamut to be sent to law officer of sessions court.

Sentences, character of.

Sentence once passed cannot be altered.

852. A session judge has no authority to alter his sentence once passed; he must report the case for the consideration and orders of the nizamut adawlut. Const. Nos. 629, and 643.

Sentence to be passed in the most public manner.

853. The session judges should invariably make it a rule to pass sentence upon prisoners in the most public manner, and to explain to them the enormity of their crimes; and they should take the opportunities thus presented to them in crowded courts of explaining the provisions of such penal enactments, as may have been recently passed by the government, and are but imperfectly known or understood by the community. C. O. No. 160 of vol. 1.

The regulations supersede Mahomedan law.

854. In cases where a stated penalty is prescribed for an offence, as well by the regulations as by the Mahomedan law, the provisions of the latter are superseded. N. A. R. vol. 1, page 262.

In cases of murder, futwas to be given according to the two disciples.

855. On trials for murder, the law officers are to deliver their futwa, or law opinions, upon the case according to the doctrines of Yoosuf and Mahomed. *Beng.* Reg. IX. 1793. sect. 50. *Ced. Prov.* Reg. VII. 1803. sect. 19.

A promise not to prosecute does not bar a capital sentence.

856. A promise made by the prosecutor not to prosecute was not considered sufficient to bar a capital sentence in a case of murder, as such promise did not affect the credibility of the evidence generally. N. A. R. vol. 2, page 96; and vol. 3, page 69.

The punishment of mutilation is not to be adjudged: rules for commutation.

857. No criminal is to suffer the punishment of mutilation. If a prisoner is sentenced, in conformity with the futwa of the law officer, to lose two limbs, instead of being made to undergo such punishment, he is to be imprisoned and kept to hard labor for fourteen years: and if any prisoner is so sentenced to lose one limb, he is, in lieu of such punishment, to be imprisoned and kept to hard labor for seven years. The judge, accordingly, when any prisoner is sentenced to suffer mutilation, is to commute such punishment for imprisonment and hard labor for the term above prescribed, and to issue his warrant to the magistrate for that purpose. *Beng.* Reg. IX. 1793. sect. 51. *Ced. Prov.* Reg. VII. 1803. sects. 20 and 21.

Judge may exempt from labor.

858. A session judge may insert an exemption from hard labor in the warrants issued by him to the magistrate in cases wherein, on consideration of the rank or situation in life of any person sentenced to imprisonment, he considers him to be an improper subject for hard labor. C. O. No. 44 of vol. 1.

In sentences of perpetual imprisonment, the judge is to record his reasons for not proposing transportation for life.

859. Whenever a session judge proposes a sentence of perpetual imprisonment in Alipore jail, he is to record his reasons for not recommending a sentence of transportation for life. Under C. O. No. 130 of vol. 3, the judge was directed invariably to recommend transportation for life instead of imprisonment for life; but this rule is no longer required to be observed, in consequence of the enactment of Act XIV. 1844, which authorizes a single judge of the sudder court to pass sentence of transportation beyond sea for life against a prisoner recommended to be imprisoned for life. C. O. dated May 22, 1846, in Bengalee Gazette, page 422

Sentences, mode of, and referrible trials.

Sentence to be passed in the terms of the futwa.

If futwa adjudges death, or imprisonment for life, case to be referred.

860. On trial, the session judge is attentively to consider the futwa, placed on record by the law officer, and if it appears to him consonant to natural justice, and also conformable to the Mahomedan law, he is to pass sentence in the terms of the futwa (except in cases in which he is expressly directed not to pass sentence) and to issue his warrant to the magistrate for the execution of it without further reference or delay. Provided, however, that in all cases where a prisoner is condemned by such sentence to suffer death, or imprisonment for life, the judge is to transmit a copy of the sentence, and of all the papers and proceedings read or recorded during the trial to the nizamut adawlut, and is not to execute such sentence, but to wait the final sentence of that court. *Beng.* Reg. IX. 1793. sect. 47. *Ced. Prov.* Reg. VII. 1803. sect. 15. cl. 1.

Judge may refer any case in which he considers the sentence within his competence inadequate.

861. It is competent to a session judge to refer to the nizamut adawlut any trial in which he considers the sentence, he is empowered to pass, inadequate to the guilt of the prisoner, anything in the existing regulations to the contrary notwithstanding. Act XXXI. 1841. sect. 6. Reg. VI. 1831. sect. 12.

If judge disapproves of the proceedings, or of the futwa, he is not to pass sentence, but to refer.

862. When the judge disapproves of any part of the proceedings held on a trial, or of the futwa delivered by the law officer, he is not to pass sentence in such cases, but is to complete the trial, and transmit to the nizamut adawlut a copy of all the proceedings, and the futwa of the law officer, with a separate letter stating the grounds of his disapproval, and wait the sentence of that court. *Beng.* Reg. IX. 1793. sect. 53. *Ced. Prov.* Reg. VII. 1803. sect. 22.

A difference of opinion as to the aggravated character of an offence is not a sufficient ground of reference.

863. In a case, in which the futwa convicted the prisoners of *shibeh-umd* and declared them liable to *deyut*, the session judge, considering the prisoners guilty of aggravated culpable homicide, referred the case. The nizamut adawlut held that the common acceptation of the term *shibeh-umd* is culpable homicide; and that the difference of opinion in regard to the aggravation was not a legitimate ground of reference. N. A. R. vol. 5, page 63.

Judge may sentence persons convicted of privity, the principals having been already sentenced by the nizamut.

864. In a case of dacoity attended with murder, in which the principals had been previously convicted and sentenced by the nizamut, it was held unnecessary to refer the trial of certain accomplices convicted of privity only. N. A. R. vol. 5, page 17.

Recapitulation of referrible trials.

865. Under the above rules the sessions courts are to transmit to the nizamut adawlut all trials, in which the prisoner or prisoners are convicted and liable to a sentence of perpetual imprisonment, or death; as well as in all cases, wherein the judge disapproves the futwa given by the law officer, and has not been expressly authorized by this or any other regulation to pass sentence, notwithstanding such futwa, either for the punishment of the prisoner, or for his acquittal and discharge either with or without security. Reg. LIII. 1803. sect. 6, cl. 1.

In what trials referred the judge is not to pass sentence;

and in what cases he is to pass sentence;

866. In trials referrible to the nizamut, if the judge disapprove the futwa given by the law officer; or if the prisoner or prisoners convicted, or any of the prisoners convicted on the same trial, be liable to a sentence of death; the judge is not to pass any sentence (except for the acquittal and discharge of any prisoners not convicted), but is to transmit the trial, with his opinion thereupon, for the sentence of the nizamut adawlut. If the judge concur with the law officer in the conviction of the prisoner, or prisoners, and none of them be liable to sentence of death, the judge is to pass sentence on the prisoner or prisoners so convicted,

but such sentence is not final in referrible cases.

So, when an accomplice is convicted, in a case referred as to the principal;

but accomplice, if acquitted, to be released at once, although case referred.

as directed above. But such sentences, in all trials referrible to the nizamut, are not to be deemed final, nor is any warrant to be issued for carrying the same into execution, until they be confirmed by the nizamut. Moreover, whenever the trial of a principal in any crime may be referred for the sentence or confirmation of the nizamut, whether under the present or any other regulation; and an accomplice in the same crime has been brought to trial and convicted at the same time as the principal; the session judge is not to carry into execution his sentence upon the accomplice so convicted; but is to wait the confirmation or final sentence of the nizamut, as well respecting the accomplice as the principal. Provided, however, that this restriction be not understood to prevent the judge from passing a final sentence of acquittal upon any prisoners charged as accomplices, whom he acquits of such charge, in concurrence with the law officer; or from directing the release of any prisoners so acquitted, notwithstanding the reference of the trial of the principal to the nizamut. Reg. LIII. 1803. sect. 6, cl. 2.

If the session judge differs from law officer as to *some* of the prisoners, he is to pass sentence on those only regarding whom he concurs.

867. Whenever a criminal trial is referrible to the nizamut adawlut by reason of the session judge differing in opinion with his law officer as to the conviction or acquittal of one or more prisoners included in the same trial; the sentence in which, in regard to the other prisoners, is within his competence under the regulations in force; it is necessary for the nizamut to revise only such parts of the proceedings on the trial as relate to the prisoner or prisoners in respect to whom the reference is made. In such cases therefore the session judge is required to pass such sentence as he deems just and proper, and within his competence, in regard to those prisoners whom he convicts or acquits in concurrence with the futwa of his law officer: and in his reference to the nizamut adawlut regarding any other prisoners included in the same trial, he is enjoined to state specifically his opinion on the guilt or innocence of the prisoners, with the grounds of his differing from the futwa; as also to point out in his report, accompanying the trial, those parts of the proceedings or evidence which may affect the prisoners, in respect to whom the case is referred, for the consideration and sentence of the nizamut.(a) Reg. IX. 1831. sect. 4, cl. 3.

But such sentence is not to be executed until the receipt of the orders of the nizamut; who may revise the whole proceedings.

868. In such cases the session judge is to suspend execution of any sentence of punishment which he passes in concurrence with the law officer, until the final sentence or orders of the nizamut have been received upon the trial referred to that court. Nothing in this regulation is intended to preclude the nizamut from revising the whole proceedings in the cases in question, if there appear sufficient grounds for so doing. Reg. IX. 1831. sect. 4, cl. 6.

If judge refers without passing sentence on those in whose conviction he agrees, the proceedings are returned by the nizamut.

869. Under the above provisions a session judge ought in all cases, in which he concurs with his law officer in the conviction of any of the prisoners, to pass sentence upon such prisoners, but to suspend the execution thereof, until he receives the final sentence or orders of the nizamut upon the whole trial. In a case wherein the judge convicting the prisoners neglected to do this, the proceedings were returned with directions to pass sentence, and to resubmit the trial for the orders of the court in the matter of those prisoners, in whose acquittal he had not concurred with the futwa of his law officer. In another case when the judge

(a) The same rule was prescribed by Const. No. 484, dated June 6, 1828, "under the regulations at large, and particularly with reference to cl. 2, sect. 6, Reg. LIII. 1803," which is given above in para. 866.

acquitted one prisoner in opposition to the futwa, but did not pass sentence on the others in whose conviction he concurred, the nizamut agreed in the acquittal of the former, and ordered his immediate discharge, but directed the judge to dispose of the rest of the prisoners. N. A. R. vol. 4, page 330; and vol. 5, page 139.

If the judge and law officer differ on any point not provided for in the regulations.

870. In a case in which the law officer convicted a prisoner of the act charged, but declared him not liable to any punishment, the nizamut adawlut held that the judge could not pass sentence of punishment; and that all trials must be referred to the nizamut, wherein the judge differs from the futwa of the law officer on any other grounds than those especially provided for in the regulations. N. A. R. vol. 3, page 230.

Questions of law arising during the trial. If judge differs from the exposition of the law officer, sentence not to be passed, but case to be referred.

871. The session judge is to refer to his law officer all questions relating to points of law, that may arise during the course of any trial; and respecting which no specific rules have been enacted by the governor general in council; and is to regulate his proceedings by the opinions which are delivered by such officer. Where such opinion appears to the judge contrary to the principles of natural justice, or to the Mahomedan law, he is nevertheless (in cases not provided for by the regulations) to be guided by them; and after completing the trial, and obtaining the futwa of the law officer upon the case, he is, without passing sentence upon it, to transmit the proceedings and futwa to the nizamut adawlut, with a separate letter stating his objections to such opinions or futwa, and to wait the sentence of that court. *Beng* Reg. IX. 1793. sect. 54. *Ced. Prov.* Reg. VII. 1803. sect. 23.

Religious persuasion of witnesses not to invalidate their testimony. If law officer rejects, sentence is not to be passed, but case referred.

872. The religious persuasion of witnesses is not to be considered as a bar to the conviction or condemnation of a prisoner; but in cases in which the evidence given on a trial would be deemed incompetent by the Mahomedan law, solely on the ground of the persons giving such evidence not professing the Mahomedan religion, the law officer is to be required to declare what would have been his futwa, supposing such witnesses had been Mahomedans. The judge is not to pass sentence in such cases, but is to transmit the record of the trial, with the futwa directed to be required from the law officer, to the nizamut adawlut, which court, provided they approve of the proceedings held on the trial, are to pass such sentence as they would have passed, had such witnesses been Mahomedans. *Beng.* Reg. IX. 1793. sect. 56. *Ced. Prov.* Reg. VII. 1803. sect. 25.

So, if law officer rejects evidence on any other account, and the conviction of prisoner depends principally upon such evidence.

873. If the evidence of a witness on a criminal trial before a sessions court is declared by the Mahomedan law officer inadmissible, on the ground of the witness being a police officer, or an officer of government of any description; or on any other ground of exception in the Mahomedan rules of evidence, which appear to the judge unreasonable and insufficient; the judge is to cause the examination of the witness to be taken, notwithstanding the exception stated by the law officer; and is to require the latter, on the completion of the trial, to declare in his futwa the sentence to which the prisoner would have been liable, if the evidence of the witness or witnesses objected to had been admissible under the provisions of the Mahomedan law. In such cases, however, if the conviction of the prisoner depend exclusively or principally upon the evidence of the witness or witnesses objected to by the law officer, the judge is not to pass any sentence; but is to refer the trial to the Nizamut Adawlut; which court, after taking a futwa from its law officer, is empowered to pass such sentence as may be deemed just and proper, under the regulations in force. Reg. XVII. 1817. sect. 5.

Example.

874. Under the above rule, in a case in which the conviction of a prisoner rested principally upon the evidence of two females, whose testimony the law officer considered insufficient for conviction, it was held incumbent on the session judge to refer the case for the orders of the nizamut. Const. No. 1045.

If the law officer acquits, and the judge convicts, sentence is not to be passed, but case referred.

875. When a person charged with a criminal offence, and brought to trial before a sessions court, is acquitted of the charge by the futwa of the Mahomedan law officer present at the trial, and the judge before whom the trial is held, on full consideration of the evidence, and of all the circumstances of the case, is of opinion that the proof against the prisoner, whether founded on his free and voluntary confession, or on the testimony of credible witnesses, or on circumstances of strong presumption, is sufficient to convict the prisoner of the whole, or any part of the charge, so as to render him a proper object of punishment, the judge is not to pass any sentence; but is, as directed by the regulations in all cases wherein a judge disapproves the futwa of the law officer, to transmit without delay the whole of the proceedings on the commitment and trial, with the futwa of the law officer, to the nizamut adawlut; and is to state in a letter to that court the specific crime or crimes, which he considers established against the prisoner. Reg. XVII. 1817. sect. 2.

So, if judge convicts on only one count, and law officer only on the other.

876. In the event of a prisoner committed on two counts being convicted on only one count by the session judge, and only on the other count by the law officer, the judge is not competent to pass sentence, but should refer the trial to the nizamut adawlut. Const. No. 971.

Examples of referrible trials.

877. In a case of conviction by the law officer of robbery with attempt to murder, the trial must necessarily be referred to the nizamut, whether the judge concurs in or dissents from the futwa. N. A. R. vol. 2, page 264.

878. All cases of burglary attended with corporal injury in such degree as to endanger life must be referred for the final orders of the nizamut under cl. 4, sect. 8, Reg. XVII. 1817. N. A. R. vol. 4, page 284.

Examples of trials not referrible.

879. Under the provisions of Reg. XVI. 1825, the case of a chowkeedar convicted of dacoity is not necessarily referrible to the nizamut. N. A. R. vol. 5, page 68.

880. A conviction on a charge of administering intoxicating drugs is not necessarily referrible to the nizamut. The provisions of cl. 4, sect. 8, Reg. XVII. 1817 refer to persons guilty of administering drugs of such a nature as to endanger life. N. A. R. vol. 5, page 121. C. O. No. 64 of vol. 3.

881. The session judge, concurring with his law officer in convicting a prisoner of wounding with intent to kill, is bound, under the provisions of Reg. XII. 1829, to pass sentence upon him, leaving it to the nizamut to call for the proceedings, should they consider the punishment inadequate. N. A. R. vol. 5, page 176.

Discretionary punishment.

Futwa to declare grounds of conviction, but to leave measure of punishment to the judge.

882. In all trials, wherein the Mahomedan law officer considers the prisoner liable to discretionary punishment *(tazeer, acoobut* or *seasut)*, his futwa is to declare the same generally, with a statement of the grounds on which the prisoner is adjudged subject to discretionary punishment; leaving the measure of punishment in such cases to be determined by the session judge before whom the trial is held, or by the court of nizamut adawlut, under the provisions contained in this or any other regulation. Reg. LIII. 1803. sect. 2, cl. 1.

883. If the crime, for which the prisoner is declared liable to discretionary punishment, in such cases, has been specifically provided for by any existing regulation, denouncing the penalty to be adjudged on proof of the commission of such crime; and the judge before whom the trial is held considers the crime to have been established against the prisoner, whether by his free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence; he is to sentence the prisoner to suffer the punishment for such crime prescribed by the regulations; or if the case be referrible to the nizamut adawlut, to transmit the trial, with his opinion thereupon, to that court. Reg. LIII. 1803. sect. 2, cl. 2.

Sentence to be passed, if the crime has been provided for by any regulation.

884. If the crime, for which the prisoner is declared liable to discretionary punishment, has not been specifically provided for by any regulation denouncing the penalty to be adjudged on proof of the commission of it; but is such as would have subjected the prisoner to the specific penalty of *hudd* or *kisas*, provided by the Mahomedan law, if he had been convicted by full legal evidence; and the futwa of the law officer declares him liable to discretionary punishment in consequence of the evidence not being such as the Mahomedan law requires for a sentence of *hudd* or *kisas*, though sufficient to convict the prisoner on strong presumptive proof or violent presumption *(ghalib-oo-zun)*; the judge before whom the trial is held, provided he concurs in the conviction of the prisoner, is to require the law officer to declare by a second futwa to what specific punishment (of *hudd* or *kisas*) the prisoner would have been liable under the Mahomedan law, if he had been convicted by full legal evidence; and is to proceed thereupon to pass sentence according to such second futwa; (commuting the punishment if any regulation requires it;) or, if the case be referrible to the nizamut adawlut, he is to transmit the trial with his opinion to that court. Reg. LIII. 1803. sect. 2, cl. 3.

If the crime has been provided for by no regulation, but specifically by the Mahomedan law; and a sentence of *hudd* or *kisas* is barred by a defect in the evidence; a second futwa is to be required.

885. The judge before whom the trial is held, is to proceed in like manner as directed in the preceding clause, when the crime of which the prisoner is convicted (whether upon full legal evidence, or upon strong presumptive proof) has not been specifically provided for by any regulation; but would subject the prisoner to the specific penalty of *hudd* or *kisas* provided by the Mahomedan law, if the sentence against him for such penalty were not barred by some special exception, or scrupulous distinction *(shoobah)*, not affecting the nature and criminality of the offence, and evidently repugnant to the principles of equal justice, in consequence of which bar to a judgment for the specific penalty the prisoner is declared liable to discretionary punishment. In such cases the law officer is to declare by a second futwa to what punishment the prisoner would have been liable under the Mahomedan law for the crime committed by him, if the special exception or distinction, by which *hudd* or *kisas* is barred in the particular case, had not existed; and the judge is to proceed thereupon as directed in the preceding clause. Reg. LIII. 1803. sect. 2, cl. 4.

So, if the crime has not been provided for by any regulation, and *hudd* and *kisas* are barred by a legal exception, not affecting the nature of the offence, and repugnant to justice.

886. Nothing in this section, however, is to be construed as authorizing a sentence of discretionary punishment exceeding, or equal to, the specific punishment prescribed by the Mahomedan law, in cases where such specific penalty is remitted or mitigated by the provisions of the Mahomedan law, in consideration of circumstances which alter the nature, and diminish the criminality, of the offence, unless such enhanced or equal punishment for the crime in question has been expressly denounced by some regulation in modification of the Mahomedan law. Reg. LIII. 1803. sect. 2, cl. 5.

But not, if such exception alters the nature, and diminishes the criminality of the offence.

But no punishment is to be inflicted on suspicion only, or weak presumption of guilt.

887. Nor is any part of this regulation to be considered to authorize the infliction of any punishment whatever upon suspicion only (termed by the Mahomedan lawyers *wuhm*, *shuk*, or *shoobuh zaeefah*) when the evidence against the prisoner is undeserving of credit; or the presumption of his guilt, arising from credible testimony or circumstantial evidence, is weak; and does not amount to the degree of strong and violent presumption held sufficient for conviction, and recognized as such in the Mahomedan law under the denominations of *ghalib-oo-zun*, *akbur-oo-raee*, and *shoobuh-u-cuvvee*, or *shoodeed*. When the judge, before whom the prisoner is tried, does not consider him convicted on such presumptive proof, or on the evidence of credible witnesses, or on his own confession, he is not to sentence the prisoner to suffer any punishment, whatever may be the futwa of the law officer. But, upon proof of notorious bad character, the judge may direct the magistrate to detain the prisoner in custody, until he gives sufficient security for his future good behaviour and appearance when required. Reg. LIII. 1803. sect. 2, cl. 6.

Security may be taken for future good behaviour.

If the crime has not been specifically provided for by any regulation or by Mahomedan law.

888. If the crime of which a prisoner is convicted, and for which he is declared liable to discretionary punishment has neither been specifically provided for by any regulation, nor by any stated penalty in the Mahomedan law; and the judge before whom the trial is held considers the crime to have been established against the prisoner and deserving of punishment; he is to adjudge the prisoner, after consulting with the law officer respecting the measure of punishment which under the discretion left by the law, and the whole of the circumstances of the case, should be inflicted upon the prisoner, to suffer such punishment as appears adequate to his guilt, and the nature of the offence of which he is convicted; not exceeding corporal punishment of thirty-nine stripes, and imprisonment with hard labor for seven years. If in any instance this degree of punishment appears to the judge insufficient, in a case not specifically provided for by the Mahomedan law or the regulations, he is to transmit the trial with his sentiments thereon to the nizamut adawlut. Reg. LIII. 1803. sect. 2, cl. 7.

Tusher cannot be awarded under the above provisions.

889. A sentence of tusheer cannot be awarded by a session court under the above provision; nor in any case except when it is expressly authorised by the regulations. Const. No. 104. N. A. R. vol. 1, pages 223 and 234.

Power of session judge to pass sentence under futwa of *hukoomut-i-udl*.

890. In many cases of corporal injury, extending even to *maihem*, the law officers declared the prisoners on full conviction liable to *hukoomut-i-udl* only, or a just award, which is construed by them to mean payment by the prisoner of the expences incurred for medicines and medical attendance by the party injured. Such reparation being considered wholly inedequate, it was enacted that the judge should, under such futwa, be competent to pass sentence of imprisonment for any period not exceeding seven years, with power to refer the record to the nizamut in any case in which they deem that degree of punishment inadequate; and that on receipt thereof the nizamut adawlut, after requiring a further futwa from their law officers, should pass sentence of imprisonment for such limited period of time, as under all the circumstances of the case is equitable and just.(a) Reg. IV. 1822. sect. 6.

(a) In a case, in which certain convicts under sentence of perpetual imprisonment were found guilty of assault and wounding, and declared by the law officer liable to *tazeer* as well as *hukoomut-i-udl*, it was held that the above provision does not preclude the judge from awarding corporal punishment under cl. 7, sect. 2, Reg. LIII. 1803. N. A. R. vol 2, page 362.

Conviction of two or more offences.

In such cases an aggregate sentence may be passed within certain limits. If that is insufficient, the cases are to be referred.

891. Whenever a prisoner is brought to trial before a sessions court for two or more distinct offences, included in separate commitments, and is convicted at the same session of two or more offences, the prescribed penalties of which, under the regulations in force, exceed in the aggregate thirty-nine stripes and imprisonment for fourteen years; but do not, for the crime established against the prisoner on any one commitment, amount to death or imprisonment for life (in which case the trial would be referrible to the nizamut adawlut); the judge is authorized to reduce the prescribed punishment for the whole of the offences of which the prisoner is so convicted at the same session, so as not to exceed in the aggregate thirty-nine stripes and imprisonment in banishment from the district for fourteen years; provided he is of opinion, on consideration of the several acts of criminality established against the prisoner, and the circumstances of each case, that the punishment above specified is sufficient. If the judge, however, is of opinion that the prisoner is deserving of imprisonment for a longer period than fourteen years, he is to pass sentence in the several cases for the punishment prescribed by the regulations (except that the number of stripes to be adjudged against a prisoner at any one session does not exceed thirty-nine), and is to transmit the proceedings on each case, with a report of the circumstances, and his sentiments upon the punishment which should be inflicted upon the prisoner, for the final sentence or order of the nizamut adawlut. Reg. XV. 1814. sect. 2, cl. 1.

Principle restricted to offences committed before conviction.

892. The principal of the above clause is also to be considered applicable to cases, in which prisoners, convicted and sentenced at a preceding session, are convicted at a subsequent session of another offence committed before their first conviction and sentence. But it is not meant to apply to any new offence committed by a person after his conviction of a former offence, whether the period of confinement to which he has been sentenced for his former offence has expired at the time of his committing the subsequent offence or otherwise. Reg. XV. 1814. sect. 2, cl. 2.

Tusher cannot be awarded under the above.

893. A judge of circuit, convicting a prisoner of three separate offences, considered fourteen years' imprisonment in the aggregate with tusheer a sufficient sentence: but was informed that the additional penalty of tusheer could not legally be awarded, as that mode of punishment is not mentioned in the above provisions.* Const. No. 360.

* *v.* ¶ 889.

If the prisoner is liable on the first conviction to the maximum punishment, he need not be tried on any further charge, except when such charge would subject him to death, or imprisonment for life.

894. When a prisoner, committed or held to bail for trial before the sessions on two or more distinct charges, is liable on one or more conviction to a sentence of imprisonment for fourteen years; and the further charge or charges against the prisoner are not such as would, on conviction, subject him to a sentence of death or imprisonment for life, it is not requisite for the judge to try such additional charge or charges, unless there appears to be special and sufficient cause for trying the same. But, whenever a judge exercises the discretion thus vested in him, he is to report the same with his reasons to the nizamut in the statement transmittible to that court of sentences passed by the sessions court, or, if the trial held upon the prisoner is on any account referrible, in the letter accompanying such trial; and it is competent to the nizamut to order a further trial of the remaining charge or charges against the prisoner in all cases wherein that court may judge it proper so to direct. Reg. XV. 1814. sect. 2, cl. 3.

The above provision is not affected by regulations awarding the minimum of punishment.

895. The provisions of Reg. XVI. 1825, which declare the minimum punishment which a session judge can award in certain cases of robbery, do not alter the above provisions, under which the judge is competent to reduce the punishment of prisoners convicted of two offences to fourteen years' imprisonment. N. A. R. vol. 2, page 459.

The judge must try a sufficient number of cases to warrant a maximum sentence; but need try no more.

896. When a prisoner is committed in several cases, it is imperative on the judge, under the above provisions, to try the whole or a sufficient number of the charges, until, upon a consideration of the several acts of criminality established against the prisoner, he is of opinion that a sentence of fourteen years' imprisonment is sufficient and adequate, and that no reason therefore exists for trying the remainder. Const. No. 1011.

But under certain circumstances the nizamut required another charge to be tried.

897. A prisoner was committed in two cases, charged in the first with murder by poison, and in the second with administering poisonous drugs with intent to rob; and being convicted in the first and declared liable to *seasut* extending to death, the judge of circuit did not think it necessary to proceed to the trial of the additional charge, which could lead only to an inferior penalty; but the nizamut deemed it advisable to proceed with the trial, as it might tend, if proved, to establish an assertion made by the judge, that "the prisoner was in the habit of travelling about plundering by means of administering poisonous drugs." N. A. R. vol. 2, page 51.

In such cases, trials to be kept distinct; and sentence to be passed on all in one.

898. When a prisoner is charged with two or more distinct offences, the record of each trial should be kept separate; and a futwa should be taken on each individual case, not on the whole collectively; under each futwa the judge should record his assent or dissent; and each of the trials should refer to the one last tried, which should include in its final order all the three cases. N. A. R. vol. 2, page 140.

Rule for consolidation of sentences under the Mahomedan law.

899. Under the Mahomedan law it is said, that one punishment suffices for every previous repetition of the same offence; and this rule is strictly applicable to the specific punishment adjudged under a sentence of *hudd;* when extended to sentences of *tazeer*, it leaves a considerable discretion with the judge in apportioning the punishment to the number of offences committed, as well as to their degree of criminality. This consolidation of sentences (*tudakhil*) would not militate against a due enforcement of the above provisions, if the judge were careful to make the law officer deliver his futwa in conformity with cl. 1, sect. 2, Reg. LIII. 1803, when the prisoner is liable to discretionary punishment. C. O. No. 140 of vol. 1.

Example of prisoner concerned in two cases referred to nizamut.

900. A case of burglary and theft was referred to the nizamut, because the prisoner was recommended to be transported for life in a case of dacoity transmitted at the same time: but, as he was acquitted of the latter charge, the former case was returned to the circuit judge to be disposed of in the usual manner. N. A. R. vol. 3, page 119.

SECTION XXIV.

OF CORPORAL PUNISHMENT.

Regulations awarding corporal punishment are rescinded.

901. All provisions of the [then] existing regulations, which authorize a sentence of corporal punishment by any court or any officer exercising magisterial powers, are rescinded.(a) Reg. II. 1834. sect. 2, cl. 1.

Such punishment to be commuted to additional imprisonment.

Powers of courts.

902. Whenever a case comes before such court or officer, in which a prisoner would be liable to corporal punishment under the [then] existing regulations, in addition to the period of imprisonment limited by the regulations, it is competent to such court or officer, passing sentence, to direct an additional period of imprisonment, as follows: courts of nizamut adawlut, or courts of session and circuit, two years,—magistrates or joint magistrates, one year,—assistants, principal or other sudder ameens, one month. Reg. II. 1834. sect. 2, cl 2.

Powers of assistants with special power.

903. Assistants exercising special powers cannot in any case award a longer term of imprisonment than one month in lieu of stripes. They are, however, at liberty, as in other cases in which they deem the prisoner deserving of a degree of punishment beyond their

(a) By Act III. 1844, corporal punishment has been legalized in certain cases of petty theft; but its provisions will be more appropriately noticed in the chapter of theft, than in this place. It will not, however, be useless to study the following remarks, which are extracted from note A appended to the Penal Code prepared by the Indian Law Commissioners.—"We have not thought it desirable to place flogging in the list of punishments. If inflicted for atrocious crimes with a severity proportioned to the magnitude of those crimes, that punishment is open to the very serious objections which may be urged against all cruel punishments, and which are so well known that it is unnecessary for us to recapitulate them. When inflicted on men of mature age, particularly if they be of decent stations in life, it is a punishment of which the severity consists, to a great extent, in the disgrace which it causes; and, to that extent, the arguments which we have used against public exposure* apply to flogging. It has been represented to us by some functionaries in Bengal that the best mode of stimulating the lower officers of police to the active discharge of their duties is by flogging, and that since the abolition of that punishment in this presidency, the magistrates of the lower provinces have found great difficulty in managing that class of persons. This difficulty has not been experienced in any other part of India. We, therefore, cannot, without much stronger evidence than is now before us, believe that it is impracticable to make the police officers of the lower provinces efficient without resorting to corporal punishment. The objections to the old system are obvious. To inflict on a public servant, who ought to respect himself and to be respected by others, an ignominious punishment which leaves an indelible mark, and to suffer him still to remain a public servant; to place a stigma on him which renders him an object of contempt to the mass of the population, and to continue to intrust him with any portion, however small, of the powers of Government; appears to us to be a course which nothing but the strongest necessity can justify. The moderate flogging of young offenders for some petty offences is not open, at least in any serious degree, to the objections which we have stated. Flogging does not inflict on a boy that sort of ignominy which it causes to a grown man. Up to a certain age boys even of the higher classes, are often corrected with stripes by their parents and guardians; and this circumstance takes away a considerable part of the disgrace of stripes inflicted on a boy by order of a magistrate. In countries where a bad system of prison-discipline exists, the punishment of flogging has in such cases one great advantage over that of imprisonment. The young offender is not exposed even for a day to the contaminating influence of an ill regulated gaol. It is our hope and belief, however, that the reforms which are now under consideration will prevent the gaols of India from exercising any such contaminating influence; and, if that should be the case, we are inclined to think that the effect of a few days passed in solitude or in hard and monotonous labor would be more salutary than that of stripes. Being satisfied, therefore, that the punishment of flogging can be proper only in a few cases, and not being satisfied that it is necessary in any, we are unwilling to advise the government to retrace its steps, and to re-establish throughout the British territories a practice which, by a policy unquestionably humane and by no means proved to have been injudicious, has recently been abolished through a large part of those territories."

* *See note to subsequent Section "Of tusheer."*

competency, to return the case to the magistrate for the issue of final orders, stating their own opinion thereon. C. O. No. 162 of vol. 2. Const. No. 883.

Stripes cannot be awarded, unless they are expressly mentioned by the regulation as the punishment of the offence in question.

904. A magistrate has no authority whatever to award corporal punishment [or a term of imprisonment in lieu thereof], where it is not expressly given to him by the regulation: his general powers of punishment, as laid down in sect. 19, Reg. IX. 1807, are limited to fine and imprisonment. C. O. No. 259 of vol. 1.

So, police officers are not liable to the commutation, because they were not formerly liable to stripes *in addition to* imprisonment.

905. As burkundauzes, chowkeedars, &c. were not formerly liable for neglect of duty to stripes in addition to imprisonment, the provisions of Reg. II. 1834, in prohibiting the infliction of corporal punishment, do not authorize any addition to the period of imprisonment, to which the officers in question were liable previous to the issue of that enactment.(*b*) C. O. No. 238 of vol. 2.

Magistrate may always commute stripes to a year's imprisonment.

906. A sentence of imprisonment for one year in lieu of stripes, in addition to sentence of six months' imprisonment, passed by a magistrate, is not illegal under the wording of the above provisions. Const. No. 1183.

907. A magistrate is competent, under the above provisions, to award imprisonment for a period of one year in lieu of corporal punishment, in addition to the term he is authorized to award under sect. 5, Reg. XII. 1818, in the case of a convict making his escape. Const. No. 1184.

Convicts, sentenced to labor in irons, may be flogged in certain cases of disturbance, at the moment.

908. The above provisions do not exempt convicts, sentenced to labor in irons, from such moderate corporal punishment during their imprisonment, as may be unavoidable for the maintenance of the discipline of the jails. Reg. II. 1834. sect. 6

909. Corporal punishment can be inflicted on a convict under sentence of labor in irons, only when such punishment is considered absolutely necessary, at the moment, to quell a riot or disturbance among the prisoners; or in cases of violent resistance to the jail officers; or any other refractory conduct on the part of a prisoner, such for instance as a contumacious refusal to work; where the punishment may follow so immediately upon the offence as to be calculated, by the force of example, to deter others from the commission of like acts. And, if they are then flogged, no further punishment can be inflicted for the same offence. Const. No. 993. C. O. No. 1 of vol. 3. N. A. R. vol. 6, page 58.

But session judge cannot award stripes.

910. The session judge is not competent to award stripes under the foregoing section, that power being vested solely in the magistrate for the maintenance of discipline in the jail. Const. No. 1302.

Corporal punishment is not applicable to cases of homicide or wounding with intent to kill.

911. Corporal punishment may not be awarded in cases of culpable homicide under sect. 7, Reg. XVII. 1817, which was merely intended to limit the term of imprisonment, in commutation of *deyut*, to seven years. Const. No. 352. C. O. No. 293 of vol. 1.

912. In accordance with the spirit of this rule, the punishment of stripes was considered inappropriate in cases of wounding with intent to kill, and of assault attended with homicide and beating. N. A. R. vol. 2, pages 269, and 323.

(*b*) By sect. 6, Reg. III. 1812, and sect. 9, Reg. XIV. 1816, chowkeedars and other watchmen, and burkundauzes and inferior police officers, were made liable to corporal punishment instead of fine or imprisonment, "provided the offender shall appear a fit object of corporal punishment, and the magistrate shall be of opinion that the infliction thereof will operate as a better example than the penalties of fine or imprisonment."

SECTION XXV.

OF FINES.

Fines imposed by a regulation.

All fines imposed to be to the use of government; and an equivalent period of imprisonment to be fixed.

Power of session judge:

913. No fines are to be imposed by any court of criminal jurisdiction, save and except to the use of government; and whenever a fine to the use of government is imposed, the court who passes the sentence is at the same time, weighing all the circumstances of the case, to fix a definite period of imprisonment to be held as equivalent to the fine; at the expiration of which the persons convicted are to be discharged, although they have omitted to pay the fine. The imprisonment awarded by courts of session under this section, as an equivalent for fines imposed by them, is to be temporary in all cases, and not for life; and their sentences are to be executed without reference to the nizamut adawlut. *Beng.* and *Ben.* Reg. XIV. 1797. sect. 3, cl. 1. *Ced. Prov.* Reg. VI. 1803. sect. 31; and Reg. VII. 1803. sect. 39, cl. 1.

in case of a futwa of *deyut*:

* *kutl-amd,*

shibeh-amd,

kutl-khota,

kutl-kayeem-mo-kam-ba-khota,

kutl-ba-subbub,

914. Whenever the law officer declares prisoners liable to *deyut* or pecuniary fines of any kind, for any other acts than murder and the several descriptions of homicide specified* in sect. 3, Reg. IV. 1797 (*Ced. Prov.* sect. 15, Reg. VII. 1803); the session judge is to commute, at his discretion, such *deyut*, or fines, to imprisonment for such period as he thinks adequate to the offence; and the sentences in such instances are to be carried into execution without reference to the nizamut adawlut, if for temporary imprisonment; or referred to that court, if for imprisonment for life, which at its discretion is to confirm the said sentences, or mitigate, or entirely remit the imprisonment awarded. *Beng.* and *Ben.* Reg. XIV. 1797. sect. 4. *Ced. Prov.* Reg. VII. 1803. sect. 39, cl. 2.

in general is unrestricted.

915. The power of a session judge to fine is unrestricted as to amount, except when it is defined by any specific regulation (as in the case of *dhurna* by Reg. VII. 1820). Const. No. 959.

Power of nizamut adawlut.

916. The nizamut adawlut is competent to impose fines to an indefinite amount, commutable to a limited period of imprisonment. N. A. R. vol. 2, page 304.

Power of magistrate and assistants.

917. In all cases, in which the magistrates impose fines, the imprisonment to be fixed by them, as equivalent to the fines, is not to exceed the period which they can award under their general powers. *Beng.* and *Ben.* Reg. XIV. 1797. sect. 5. *Ced. Prov.* Reg. VI. 1803. sect. 31. Reg. IX. 1807. sect. 19.

If the regulation is silent as to the mode of levying the fine.

918. If a regulation, prescribing a fine for any offence, is silent as to the mode in which such fine is to be levied, it should be commuted to imprisonment under the above rules, whenever the party on whom the fiine is imposed neglects to pay it:—as in the case of persons illicitly cultivating salt churs, under sect. 12, Reg. I. 1824;—or of zumeendars neglecting to furnish lists of chowkeedars, &c. under sect. 21, Reg. XII. 1807. Const. Nos. 388, and 1150.

Fines imposed by an Act.

To be levied by distress;

and in default of chattels by imprisonment,

for not more than 2 months if fine is less than 50 rupees; or 4 months if less than 100; or 6 months in other cases.

919. In all cases of fines by which offenders are or may be punishable by any magistrate, according to the provisions of any Act heretofore passed, or which shall hereafter be passed by the governor general of India in council, it is lawful, in case of non-payment, if no other means for enforcing the payment are or shall be provided by such Act or otherwise, for the magistrate, by warrant under his hand, to levy the amount of such fine by distress and sale of any goods and chattels of the offender which may be found within the jurisdiction of such magistrate; and if no such property is found within such jurisdiction, then it is lawful for every such magistrate by warrant under his hand to commit the offender to prison, there to be imprisoned only, or to be imprisoned and kept to hard labor, according to the discretion of such magistrate, for any term not exceeding two calendar months, where the amount of the fine does not exceed fifty rupees; and for any term not exceeding four calendar months, where the amount does not exceed one hundred rupees; and for any term not exceeding six calendar months, in any other case; the commitment to be determinable in each of the cases aforesaid upon payment of the amount. Act. II. 1839. sect. 1.

Example of application of rule.

920. A person convicted of a breach of Act. XI. 1835 (regarding printing presses) is liable to be punished with fine not exceeding a certain amount, and imprisonment not exceeding a certain term. Under these provisions the offender must be sentenced to imprisonment in addition to fine; and the fine is not commutable to a further period of imprisonment, but must be levied according to the above rule. Const. No. 1325.

If the Act does not specify the extreme amount of fine or imprisonment, magistrate may not award more than 200 rupees, or 6 months.

921. In all cases in which offenders are or may be punishable by any magistrate with fine or imprisonment, or both, according to the provisions of any Act heretofore passed, or which shall hereafter be passed by the governor general of India in council, and where the extreme amount of the fine or imprisonment is not specified, it is not lawful for the magistrate to impose any fine exceeding two hundred rupees, or to imprison the offender for any term exceeding six months. Act. II. 1839. sect. 2.

Proof of the commission of the offence to be taken on solemn affirmation.

922. In all cases in which offenders are or may be punishable by fine before a magistrate, according to the provisions of any Act heretofore passed, or which hereafter shall be passed by the governor general of India in council, it is lawful for the magistrate, and he is required to receive proof of the commission of the offence upon oath, or upon solemn information in cases where a solemn affirmation is receivable by law instead of an oath. Act. II. 1839. sect. 3.

Explanation of terms, fine, and magistrate;

923. In this Act and in all Acts heretofore passed by the governor general in council, the terms "fine" and "fines" extend to all "penalties" and "forfeitures;" and the term "magistrate" extends to all "joint magistrates," "persons lawfully exercising the powers of a magistrate," and "justices of the peace." Act. II. 1839. sect. 4.

and Act.

924. The term "Act," used above, is employed in contradistinction to the "Regulations" strictly so called, and the provisions of that enactment are not intended to explain anything contained in the regulations on the subject of fines. C. O. No. 23 of vol. 3.

Miscellaneous.

Heavy fines not to be imposed on native officers.

925. The imposition of heavy fines upon native servants of government, drawing small allowances, is objectionable, as involving them in pecuniary difficulty, and inducing them to resort to improper practices for the purpose of indemnification. The preferable course is, when an officer refuses to do that which his official duty requires of him, to transfer at once the office to a more obedient holder. C. O. No. 60 of vol. 3.

926. The creation and maintenance of unauthorized funds in the public offices, through the means of fines, or from deductions made from the pay of establishments, is prohibited; and sums thus accruing should be carried to the credit of government. C. O. No. 90 of vol. 3.

Unauthorized funds not to be created by fines

927. The form of a general register of fines is prescribed*, the object of which is to provide against the misappropriation, on the part of the ministerial officers, of moneys paid into court: but it is not intended to prevent the adoption of any additional checks, which the officer presiding in the court considers necessary. Due attention is to be paid to the entry in the register of all fines immediately they are imposed,—to the issuing of perwannahs to the nazir to realize the amount of such fines,—and to the examination of the register at the commencement of every month by the head clerk, serishtadar, nazir, and treasurer of the court. C. O. No. 4 of vol. 3.

Register of fines

* *v. appendix B, No.* 26.

SECTION XXVI.

OF LABOR AND IRONS.

928. A sentence of labor can be passed in those cases only in which such penalty is expressly authorized by the regulations. Thus it was at first held, that as cl. 2, sect. 4, Reg. XVII. 1829, which prescribes the punishment for the offence of aiding and abetting in the commission of suttee, is silent in regard to labor, a session judge is not competent to sentence a person convicted of such offence to labor in addition to imprisonment. But, in this instance, the rule does not apply, because the offence in question is, by the same provision, declared to be culpable homicide, conviction of which latter offence includes liability to labor; and therefore the same penalty is awardable in the former case also. Const. No. 1125. C. O. No. 70 of vol. 3.

Sentence can be passed only when expressly authorized

929. In all cases of conviction for offences in which a sentence of imprisonment is passed for a period less than five years, (with exception to the offences of murder, dacoity, highway robbery, burglary, theft, receiving stolen or plundered property, forgery, perjury, arson, and rape, or of convictions of any attempt to commit any of those offences) the criminal courts are required to commute the penalty of labor with or without irons, which they are authorized to award in addition to imprisonment, to a fine not exceeding the amount which they are respectively competent to impose under the regulations in force; such fine to be regulated with reference to the nature of the offence, the circumstances in life of the offender, and the term of imprisonment to which he is sentenced. The court imposing the fine is to fix a certain day within a reasonable time not exceeding one month for the payment thereof, and to direct that, in default of payment by the period prescribed, the

Labor is commutable to a fine except in cases of certain offences.

But the courts may always exempt from labor and irons.

prisoner be subjected to labor without fetters, until such fine be paid, or if not paid, until the completion of the term of his sentence. Nothing in this rule is to be construed to supersede the power of the commissioners of circuit, session judges, or nizamut adawlut, of exempting persons from labor and irons in any case whatever in which they deem such exemption just and proper. Reg. II. 1834. sect. 3, cl. 1.

Not commutable when sentence is for 5 years, or more.

930. Under the above provisions, when a prisoner is sentenced to imprisonment for five years and upwards, the labor cannot be commuted to a fine. C. O. No. 221 of vol. 2.

Constructions of excepted offences · issuing forged documents;

931. Since the term forgery, as above used, does not necessarily comprehend the crime of issuing forged coin, documents, &c. knowing them to be forged, the punishment of labor on conviction of such offence is commutable to fine. Const. No. 899.

privity to burglary;

932. So, in cases of conviction for burglary, when the crime does not amount to more than simple privity, the penalty of labor must be held to be commutable to a fine. Const. No. 1178.

additional imprisonment for escaping from jail.

933. A prisoner sentenced to imprisonment for escaping from jail is entitled to exemption from labor, on payment of a fine, for the period of his confinement for that specific offence. Const. No. 1215.

The same rules apply in the case of additional imprisonment in lieu of fine.

934. In cases in which a magistrate may sentence to a term of imprisonment with labor, and also to a fine commutable to a further period of imprisonment (as in cases of affray unattended with aggravating circumstances, under sect. 3, Reg. VIII. 1828), he is competent to award labor during the further period of imprisonment as during the original term; and he may make the labor redeemable by a fine for both periods. If labor is not awarded in the former division of the sentence, it ought not to be awarded in the other. Const. Nos. 972 and 1264.

Prisoners exempted from labor to be kept separate.

935. All prisoners exempted from labor on payment of a fine under the above rule are, as far as practicable, to be kept separate, both in and out of the jail, from convicts under sentence of labor in irons; and magistrates, and superintendents of prisoners, and their subordinate officers, are to be careful to prevent all communication between the two classes. Reg. II. 1834. sect. 3, cl. 2.

Prisoners not sentenced to labor may not be allowed to work on the roads at their own request.

936. Three prisoners, sentenced to imprisonment without irons, and to labor inside the jail, petitioned to be allowed to work on the roads, and agreed to have gyves put on their legs. It was held by the nizamut adawlut, that the local officers were not competent to make any alteration in the sentence passed on the prisoners. Const. No. 1005.

The same rules are applicable to persons convicted by magistrates and their subordinates. But magistrate may always impose fetters on refractory prisoners, or those who have escaped.

937. The above rules are to be held to apply equally to persons convicted by the magistrates, joint magistrates, and assistants, and by the principal and other sudder ameens; but they are not intended to interfere with the general discretion vested in the magistrates of imposing fetters, or otherwise restraining refractory prisoners under the provisions now in force for that purpose; nor to exempt from a sentence of labor, with or without irons, convicts who having been relieved therefrom effect their escape from a jail, or other place of confinement, or from the custody of their guards, and have been re-apprehended. Reg. II. 1834. sect. 4.

938. Session judges may insert an exemption from hard labour in the warrants issued by them to the magistrate, in cases wherein, on consideration of the rank or situation in life of any person sentenced to imprisonment, they consider him to be an improper subject of hard labor. C. O. No. 44 of vol. 1.

Judge may always order exemption from labor, in passing sentence

939. In all cases wherein no specific orders are issued either by the nizamut adawlut, or sessions court, for the confinement of a prisoner with or without irons, the magistrate is at liberty to exercise his own discretion, and to direct the prisoner to be confined in fetters or not, according as the same appears proper or necessary for his safe custody, from the nature and circumstances of the case, considered with the prisoner's rank and former condition in life. C. O. No. 122 of vol. 1.

When no specific order is passed for the imposition of fetters, magistrate may use discretion.

940. The above rule is applicable to the cases of native soldiers and camp followers, who are made over to the civil authorities to undergo sentences of imprisonment adjudged against them by courts martial. C. O. No. 155 of vol. 3.

941. In the case of certain persons sentenced to five years' imprisonment by the nizamut adawlut, in which the sentence made no mention either of labor or irons as forming part of the punishment, the magistrate was informed, on a reference, that it was intended that they should be confined without labor and without irons, unless the conduct of the prisoners should render a resort to this species of restraint and punishment necessary to the due preservation of discipline in the jail. N. A. R. vol. 3, page 49.

But in such cases labor and irons should not be imposed except for the preservation of discipline

942. Magistrates are not to work upon the roads persons unfit to be so exposed from their previous habits, or the nature of their offence; and they are generally restricted from passing a sentence of fetters in cases of misdemeanor, or from imposing them on any person confined for such offence except in the event of special necessity arising out of bad conduct of the offender during his imprisonment, which may make such restraint indispensable for his security: the magistrates therefore, in placing fetters under this restriction on any person convicted of misdemeanor, are to record on their proceedings the grounds of the measure in each case. C. O. *Lower Provinces*, Nos. 217 and 223; and *Western Provinces*, No. 224 of vol. 1.

Labor is not to be imposed on persons unfitted; nor fetters on persons convicted of misdemeanors.

943. The following form is prescribed for warrants of imprisonment including a sentence of fine in lieu of labor, under the above provisons: "——— and sentenced to be imprisoned without irons for —— years from this date, and to pay a fine of rupees ——, on or before the —— day of ——, or, in default of payment, to labor, until the fine be paid, or the term of sentence expire." C. O. No. 146 of vol. 2.

Form of warrant of imprisonment when labor may be redeemed.

SECTION XXVII.

OF TUSHEER.(a)

Not to be inflicted unless expressly authorized.

944. The punishment of tusheer cannot be inflicted for any offence, except when it is expressly authorized by the regulations. N. A. R. vol. 1, page 223.

945. So, tusheer may not be awarded by courts of session under cl. 7, sect. 2, Reg. LIII. 1803, which defines the sentence of discretionary punishment within the competence of the session judge in cases not specifically provided for by any regulation or by the Mahomedan law. If the judge desires to award tusheer, he must refer the case. Const. No. 104. N. A. R. vol. 1, page 234; vol. 2, pages 50, and 238.

Females not exempted.

946. There is no rule exempting females from the punishment of tusheer. Const. No. 506.

(a) The following remarks on this species of punishment may be read with advantage; they are taken from the Penal Code prepared by the Indian Law Commissioners :—" We also considered whether it would be advisable to place in the list of punishments the degrading public exhibition of an offender on a pillory after the English fashion, or on an ass in the manner usual in this country. We are decidedly of opinion that it is not advisable to inflict that species of punishment. Of all punishments this is evidently the most unequal. It may be more severe than any punishment in the Code. It may be no punishment at all. If inflicted on a man who has quick sensibility it is generally more terrible than death itself. If inflicted on a hardened and impudent delinquent, who has often stood at the bar, and who has no character to lose, it is a punishment less serious than an hour of the treadmill. It derives all its terrors from the higher and better parts of the character of the sufferer: its severity is therefore in inverse proportion to the necessity for severity. An offender who, though he has been drawn into crime by temptation, has not yet wholly given himself up to wickedness and discarded all regard for reputation, is an offender with whom it is generally desirable to deal gently. He may still be reclaimed. He may still become a valuable member of society. On the other hand the criminal for whom disgrace has no terrors, who dreads nothing but physical suffering, restraint, and privation, and who laughs at infamy, is the very criminal against whom the whole rigour of the law ought to be put forth. To employ a punishment which is more bitter than the bitterness of death to the man who has still some remains of virtuous and honorable feeling, and which is mere matter of jest to the utterly abandoned villain, appears to us most unreasonable. If it were possible to devise a punishment which should give pain proportioned to the degree in which the offender was shameless, hard-hearted, and abandoned to vice, such a punishment would be the most effectual means of protecting society. On the other hand of all punishments the most absurd is that which produces pain proportioned to the degree in which the offender retains the sentiments of an honest man. This argument proceeds on the supposition that the public exposure of the criminal has no other terrors than those which it derives from his sensibility to shame. The English pillory, indeed, had terrors of a very different kind. The offender was, even in our own time, given up with scarcely any protection to the utmost ferocity of the mob. Such a mode of punishment is, indeed, free from one objection which we have urged against simple exposure; for it is an object of terror to the most hardened criminal. But it is open to other objections so obvious that it is unnecessary to bring them to the notice of his Lordship in Council. That the amount of punishment should be determined, not by the law or by the tribunals, but by a throng of people accidentally congregated, among whom the most ignorant and brutal would always on such an occasion be the most forward, would be a disgrace to an age and country pretending to civilization. We take it for granted that the punishment which we are considering, if inflicted in any part of India subject to the British Government, would consist in degrading exposure and nothing more. That punishment, we repeat, while it would be a mere subject of mockery to shameless and abandoned delinquents, would, when inflicted on men who have filled respectable stations and borne respectable characters, be so cruel that it would become justly more odious to the public than the very offences which it was intended to repress."

947. In all cases of punishment without reference, the execution of a sentence of tusheer is to be deferred for three months, in order to prevent the infliction of such punishment in those cases, in which the nizamut adawlut sees fit to mitigate or reverse the sentences passed by the lower courts. C. O. No. 248 of vol. 2.

In cases not referred, execution of sentence to be delayed for three months.

SECTION XXVIII.

OF TRIALS REFERRED AND CALLED FOR.

948. The sessions court is to transmit to the nizamut adawlut copies of the proceedings on the trial of all prisoners, whom it sentences to suffer death, or who in the opinion of the court are deserving of capital punishment, within ten days after the trial is completed, or as much earlier as from the state of business may be practicable. Reg. IX. 1793. sect. 58. Reg. VII. 1803. sect. 27.

When to be forwarded.

In cases involving capital punishment, trial to be transmitted within ten days.

949. In the transmission of trials to the nizamut adawlut, the session court is to give a preference, as far as practicable, to those trials in which the prisoner or prisoners have been sentenced to capital punishment, or are liable to suffer such under the regulations. Reg. IV. 1797. sect. 13. Reg. VII. 1803. sect. 36.

Such cases to be transmitted first.

950. In the transmission of the proceedings to the nizamut adawlut, the session judge is to be guided by such forms and instructions as he receives from that court. Reg. IV. 1797. sect. 14. Reg. VII. 1803. sect. 38.

Judge to be guided by the instructions of the nizamut.

951. The session judge is competent to hold to bail, or to direct the magistrate to admit to bail, any prisoner or prisoners, whose trials are referrible to the nizamut adawlut in consequence of the judge not concurring in the futwa of the law officer for the conviction of the prisoner. When the prisoner is not able to find bail, the judge is, with the least possible delay, to transmit the proceedings held upon the trial with a letter stating the grounds, on which he does not concur in the futwa of the law officer, to the nizamut adawlut; and the law officers of that court are to deliver their futwa, as soon as possible after the receipt of the trial, for the early sentence or order of the court. Reg. XIV. 1810. sect. 7.

In cases referred the judge may admit the prisoners to bail; and if they cannot provide it, the judge is to forward and the nizamut to conclude the trial without delay.

952. A judge on circuit is invariably to transmit the counterpart record of the proceedings from the station where the trial has been held, before he proceeds to any other station; unless from the number of referrible trials, his detention, while the record is transcribing, would be such as materially to impede the circuit; in which case he may defer the transmission of the trial till his arrival at the next station; reporting to the nizamut, before he quits the station at which the trials were held, what referrible trials are so deferred, the dates on which they were respectively held, and how soon the records will be transmitted. But the transmission of trials is not, in any instance, to be delayed beyond ten days after

Judge on circuit is to transmit referrible trials from the station where they are held, except in special cases.

the arrival of the judge at the next station, without strong and special reasons of absolute necessity, to be fully and immediately reported for the information of the court. C. O. Nos. 27, 143, and 181 of vol. 1.

Delay in forwarding trials is to be avoided, and is considered inexcusable.

953. It is essential to the ends of justice that delay in transmitting the records of trials referred should be obviated, as well to prevent the lengthened confinement of prisoners, who may be ultimately acquitted by the nizamut adawlut, as to expedite the punishment of those who may be convicted. No valid excuse can possibly exist for the unnecessary procrastination of their despatch; and the nizamut adawlut requires the judges so to regulate their own time, and that of their officers, that no cause of dissatisfaction may occur on this score. Reg. X. 1799, preamble. C. O. Nos. 54 (para. 24), and 135 (para. 5) of vol. 2.

Record.

Counterpart record to be forwarded with English letter containing the opinion of the judge.

The record how to be authenticated and what to include.

The proceedings of the magistrate to be sent in original; but certain papers to be transferred to the sessions record.

* *v.* ¶ 385 *and* 783.

954. As soon as possible after the close of any trial referrible to the nizamut adawlut, and with no further delay than is necessary to transcribe the proceedings held thereon, the session judge is to transmit a complete and exact counterpart of the original record of all proceedings held, and papers received, relative to such trial; with an English letter stating his opinion on the evidence, and on the guilt or innocence of the prisoners. The record is to be authenticated by the signature of the judge, and the seal of the law officer, before whom the trial has been held; and is to include the whole of the proceedings held before the sessions court, with every examination, exhibit, or material paper of whatever denomination, taken by, or delivered to that court. The whole of the proceedings and papers received from the magistrate, upon the case referred, are also to be annexed to, and transmitted with the proceedings of the sessions court; but any variations between the depositions of the witnesses before the magistrate, and session judge, are to be carefully noticed on the proceedings of the latter, as directed in cl. 7, sect. 7. Reg. IV. 1797*; and any confessions of prisoners before the magistrate, any inquest taken in cases of homicide, or any other evidence appearing on the proceedings of the magistrate, are to be entered, with the necessary proof, on the proceedings of the sessions court. Reg. X. 1799. sect. 2. Reg. VII. 1803. sect. 41.

The proceedings of the sessions court to be copied; the magistrate's omlahs are to assist in copying, and judge may employ additional mohirrirs.

The proceedings of the magistrate are to be sent in original, and not to be copied except in special cases.

955. Copies only of the proceedings of the sessions court are to be transmitted to the nizamut, the originals being retained for record in the office. And in order to enable the judge to prepare such copies with the least possible delay, the magistrate is required, on the application of the judge, to afford as far as practicable the assistance of his native officers in transcribing the original proceedings; and the judge may also employ any additional mohurrirs he may find necessary for the same purpose, transmitting a contingent bill on this account for the sanction of government. The proceedings and papers received from the magistrate, required by the above provisions to be transmitted to the nizamut, are to be transmitted as received from the magistrate without making copies of them; and such papers, after the nizamut has passed sentence on the trial, are to be returned to the sessions court. The object of sending these papers in original is to avoid the delay, trouble, and expense attending the copying of them; and no copies, therefore, should be taken, except in special cases where peculiar reasons render it advisable. C. O. Nos. 27, and 28 of vol. 1; and Nos. 135 (para. 5), and 191 of vol. 2.

956. The 6th paragraph of C. O. No. 54 of vol. 2,* was not intended to alter the practice of filing with the record of trials submitted to the nizamut the original confessions of prisoners. All original confessions and police reports are to be annexed, in the first instance, to the original record of the trial; and in all cases referred to or called for by the court, the originals should be transferred to the copy of the record submitted, attested copies being retained on the original record. C. O. No. 84 of vol. 2.

Original confessions, &c. are to be filed in the copy of the record sent to the nizamut.

* v. ¶ 775.

957. Session judges and magistrates are to cause their native officers to be very careful in transcribing the proceedings intended for the nizamut adawlut C. O. No. 22 of vol. 1.

Care to be taken in copying papers.

958. By cl. 2, sect. 7, Reg. IV. 1797 (*Ced. Prov.* cl. 1, sect. 18, Reg. VII. 1803) it was directed that Persian translations should be annexed to all examinations taken down in any other language than the Persian; and by sect. 2, Reg. X. 1799, (*Ced. Prov.* sect. 41, Reg. VII. 1803) these translations were to be included in the record of referred trials transmitted to the nizamut. But, since the introduction in the conduct of public business of the vernacular language in lieu of Persian, the court in the *lower provinces* have dispensed* with translations of all proceedings in criminal trials referred to them, with the exception of those cases, tried with the assistance of the law officer, in which the session judge recommends a capital sentence; in such cases the translations are to be made in the Oordoo language, and to be submitted in a distinct and separate nuthee. The *western* court have dispensed with the translations of evidence recorded in the vernacular language, except in so far as they require the session judges, in such cases as relate to districts wherein peculiar or corrupt dialects are in use, to transmit all proceedings they may refer to, or send up on a call of the court, written in a correct Oordoo style, and a fair and legible character; and direct the magistrates, wherever uncommon words or obvious provincialisms occur in a record of evidence, to cause the mohurrir at the time of taking it down to enter in the margin the corresponding or equivalent term in Persian. C. O. Nos. 26, and 94 of vol. 3; No. 243 of vol. 2; and C. O. S. D. A. No. 42, dated 5th July 1839.

Rules regarding translations of papers included in the record,

in the lower provinces,

* *except as regards Orissa,*

and in the western provinces.

959. In all trials regularly referred to or called for by the nizamut adawlut, copies of the vernacular and English calendars are invariably to be placed with the nuthee; and in the latter a mark is to be placed opposite the name of every witness included therein, who has been examined on the trial; a memorandum also of the names of all witnesses, not named in the magistrate's calendar, whom the judge has thought proper to summon and examine, is to be entered thereon. The preparation of the list of papers composing the record (a form of which is annexed to C. O. No. 54 of vol. 2*) is to be carefully superintended. As many trials are now required to be submitted in original, all depositions are to be correctly and legibly written. C. O. No. 273 of vol. 1; No. 187 of vol. 3; and No. 9, dated 12th June 1846, in page 437 of Bengalee Gazette.

Copies of the vernacular and English calendars to be placed with the nuthee; and memoranda regarding the witnesses examined.

* *v. appendix C, No.* 10.

960. Whenever a magistrate judges it necessary to take a copy of the whole, or any part of the original proceedings held by him, in a trial referrible by the sessions court to the nizamut adawlut, either on account of some of the persons charged with the same offence not having been apprehended, or from any other cause, he is to make application to the session judge to be allowed to take a copy or extract of such proceedings before the transmission of them to the nizamut; and the judge is to comply with such application, unless in any parti-

If magistrate requires copy of his proceedings before their transmission to the nizamut, he is to apply to the judge, who is to comply with the application, or to

state his reasons for refusing it to the nizamut.

cular instance the immediate transmission of the trial to the nizamut appears indispensably necessary. The magistrate, having taken the copy or extract required by him, is to return the original proceedings without delay to the judge, who will then transmit the same with the proceedings of the sessions court to the nizamut. When the judge deems it necessary to submit the trial without giving the magistrate an opportunity of taking a copy or extract of the proceedings held before him, he is to state the circumstance in his letter accompanying the trial to the nizamut adawlut, who will either take up the trial immediately, or will cause the magistrate to be furnished with the copy or extract desired by him. C. O. No. 94 of vol. 1.

Letter.

Letter containing opinion of judge to be sent with the record.

961. In all cases in which the sessions court is directed not to pass sentence, the judge is to accompany the record of the trial ordered to be transmitted to the nizamut adawlut with a letter containing his opinion on the merits of the case. Reg. IX. 1793. sect. 57. Reg. VII. 1803. sect. 26.

Form of the letter, and what particulars are to be noticed therein;

962. In trials referred to the nizamut adawlut the letter accompanying the reference should commence in this form: "I transmit herewith, to be laid before the nizamut adawlut, the proceedings on the trial noted in the margin, held at the station of —— on the ———."

Court of the session judge of zillah *Hooghly*.
Trial No. 3 of the calendar for the month of June 1846.

Government,.....Prosecutor,

versus

1. Bindrabun Das, aged 36 years, son of Heeranund, apprehended on the 5th May, and committed on the 12th June.
2. Hurdyal, aged 50 years, son of Govind Pershad, apprehended on the 6th May and committed on the 12th June.

} Prisoners.

Charge, ...Murder.
Date on which the offence was perpetrated, May 3rd, 1846.
Futwa, *kisas*, [or *seasut*, as the case may be.]
Both prisoners are in jail.

The marginal note should contain the particulars, and be entered according to the form annexed: the specification of the trial is to be inserted in English only. The body of the letter should contain a brief recapitulation of the circumstances stated by the prosecutor, of the evidence adduced in support of the charge, and of the defence. The letter should conclude by stating the judge's concurrence with, or dissent from, the futwa; together with a distinct expression of the judge's opinion as to the guilt or innocence of the prisoner; and, if the former, the specific crime which in his judgment has been established against the prisoner. C. O. No. 186 of vol. 1; and No. 54 of vol. 2, paras: 9, 10, and 11.

including the dates, of the perpetration of the offence and of the apprehension and commitment of each prisoner;

963. The judge is to note in the margin of the letter, under the charge on which the prisoner is committed, the date on which the offence is supposed to have been perpetrated; and opposite to the name of each prisoner the dates of his apprehension and commitment for trial. C. O. Nos. 135 and 148 of vol. 2.

and whether the prisoners are in jail or on bail.

964. A note is to be entered in the margins of the letters which accompany trials referred to the nizamut, and those called for by them, stating distinctly whether the defendants are in jail, or at large on bail, and in the latter case from what date. C. O. No. 147 of vol 3.

965. The judge is to write the names of all the prisoners, whose trials are referred to the nizamut, in the margin of the letters accompanying the trials, in English, in the order in which they are brought forward for trial. C. O. No. 102 of vol. 1.

Names of prisoners to be noted in the order in which they were tried.

966. In referring any trials, wherein one or more of the prisoners are liable under the regulations to a sentence of death, the name of such prisoner's father is to be specified in English in the margin of the letter. C. O. No. 126 of vol 1.

In cases involving death, the name of the prisoner's father to be specified.

967. Whenever a judge has reason to believe, that a prisoner has stated his age inaccurately, he is to specify, on the record of the trial, his opinion of the apparent age of the prisoner. C. O. No. 105 of vol. 1.

Judge to record his opinion of the age of the prisoner.

968. The court requires particular attention to be paid to the rules of C. O. No. 54 of vol. 2,* regarding the arrangement of the papers on the record of cases referred, and the transmission of them to the nizamut; as in the case of inattention to these rules it is necessary to return the proceedings for revision and amendment. The additional degree of labor, incident to a more careful arrangement of the papers in each case by the ministerial officers, is trifling in comparison with the objects contemplated by the circular order in question; and the judge should impress on them that, when it is found necessary to return the whole proceeding for amendment, their labor is only increased by their carelessness in the first instance.(a) C. O. No. 100 of vol. 2.

Particular attention required to the arrangement of the record, and the rules regarding the transmission of the case.

* *See above, and page* 143 *et seq.*

969. The judge having referred a trial for dacoity, wounding, and arson, without giving, in his letter or in the proceedings, a clear and explicit opinion as to the guilt or innocence of the prisoner, the case was sent back to him to supply the omission. Const. No. 222.

Judge must record his opinion of the guilt or innocence of the prisoner.

970. In referring any trials for the final orders of the nizamut adawlut, the judge is to specify the punishment which, in his opinion, would be adequate to the crime established against the prisoners. The Western Court, however, excepts from the operation of this rule trials held with the assistance of a law officer, in which cases the judge is to leave the measure of punishment to be awarded to be determined by the nizamut adawlut, confining himself to recording his opinion of the guilt or innocence of the prisoner, and of their relative degrees of guilt, should there be more than one prisoner. C. O. Nos. 22, 153, and 181 of vol. 3.

How far the Judge is to recommend the measure of punishment to be awarded.

971. In referring trials in which imprisonment for life is recommended, the judge is invariably to state his opinion, whether such imprisonment should be undergone in transportation or in the Allipore jail, with his reasons for proposing which ever of the two is suggested by him.(b) C. O. No. 41 of vol. 3.

When the Judge recommends imprisonment for life.

(a) The four last cases in volume 5 of the Nizamut Adawlut Reports are given as specimens of reports of referred trials. See pages 181, 186, 193, and 197.

(b) By C. O. No. 130 of vol 3, the judge was directed invariably to recommend in such cases a sentence of transportation for life instead of imprisonment for life; the object of which was to save the time of the court, as a single judge could not, on a recommendation of imprisonment for life, pass sentence of transportation, which is considered an aggravation of punishment. But this rule is no longer required to be observed, in consequence of the enactment of Act XIV. 1844, which authorizes a single judge of the sudder court to pass sentence of transportation beyond sea for life against a prisoner recommended to be imprisoned for life. Vide C. O. dated 22d May, 1846, in page 422 of Bengalee Gazette.

When the Judge refers a case beyond his competence for an extension, mitigation, or remission of punishment, he is to notice the same in his letter, and to state the grounds of his judgment.

* *i. e. cases of robbery attended with wounding, &c.*

972. Whenever the judge refers the trial of a prisoner or prisoners, whom he considers proper objects of capital punishment under cl. 2, sect. 4, of this regulation*; or of imprisonment for life; or of a mitigation of punishment under cl. 5 of that section; or of an extension, mitigation, or remission of punishment in any case whatever; he is to be careful to notice the same in his letter accompanying the trial referred; and is to state at large the grounds of his judgment, whether for or against the prisoner, with such of the facts and circumstances in evidence upon the trial, as may be necessary to explain the case of the prisoner whose punishment is proposed to be extended, mitigated, or remitted. Reg. LIII. 1803. sect. 6, cl. 3.

Extracts from the statements relative to the case are to be sent with the record in cases called for.

973. Session judges are to submit with each trial called for on perusal of the jail delivery statements, whether the call has been made by letter or by precept, an extract from the statements containing whatever information was conveyed in them relative to the case called for. When some prisoners have been punished and others released in the same case, an extract from each of the statements is required. The same remark applies to prisoners whose trials are postponed. C. O. Nos. 110, and 149 of vol. 2; and No. 164 of vol. 3.

If the nizamut do not pass orders on the case within six months, the Judge is to remind the court.

974. In the event of a period exceeding six months having elapsed since the actual transmission to the nizamut adawlut of any trial, in which the sentence or order of the court has not been received, the judge is to notice the same in his letter, accompanying the monthly statements, for the information of the court; stating the names of the prisoners; the crime charged against them; the date of the letter of reference; and the date on which the proceedings were transmitted. C. O. Nos. 167 (para. 5), 175, and 333 of vol. 1.

SECTION XXIX.

OF THE NIZAMUT ADAWLUT.

Constitution and functions.

975. The nizamut adawlut, or superior criminal court, is to be held at Calcutta. *Beng.* Reg. IX. 1793. sect. 66.

Courts where to be held.

976. A separate court of nizamut adawlut is constituted for the Western Provinces, and it is competent to government to fix the station, at which it is to reside, at such place within the territories belonging to this presidency, as may, from time to time, be deemed expedient. *Ced. Prov.* Reg. VI. 1831. sect. 3.

Number of judges of which the court is to consist.

977. The court is to consist of as many judges, as government may from time to time deem necessary for the despatch of the business thereof. And there are no distinctive denominations or official designations of the different judges. Reg. XII. 1811. sect. 2, cl. 2. Reg. III. 1829. sect. 2. Reg. VI. 1831. sect. 4.

Oath to be taken by the judges.

978. Each of the judges who may be appointed to the court of nizamut adawlut, previous to the execution of the duties of his office is to take and subscribe before the court, or before any person whom the government may commission to administer it, the same oath as is required to be taken and subscribed by the judges of the courts of circuit by sect. 34, Reg. IX. 1793. (See para. 727.) Reg. II. 1801. sect. 11. Reg. VIII. 1803. sect. 4. Reg. VI. 1831. sect. 5. Reg. III. 1829. sect. 3.

Appointment of register, and oath.

979. The court is to have a register, who is to be styled register to the court of nizamut adawlut. He is to take and subscribe before the court, previous to entering upon the execution of the duties of his office, the following oath: "I A. B. register to the court of nizamut adawlut solemnly swear, that I will truly and faithfully perform the duties of register to this court, according to the best of my knowledge and ability, and that I will not receive, directly or indirectly, any present or nuzzer, either in money or in effects of any kind, from any party in any suit or prosecution to be instituted, or which may be depending, or have been decided in the court of which I am register; nor will I, directly or indirectly, derive any advantage or emolument whatever from my office, excepting such as the orders of the governor general in council do or may authorize. So help me GOD." Reg. IX. 1793. sects. 69 and 70. Reg. VIII. 1803. sect. 7. Reg. VI. 1831. sect. 5.

Duties which may be transferred to register.

980. It is competent to either of the courts of nizamut adawlut, by an order under the signature of the register of such court, to transfer to such register the duty of preparing appealed cases for trial, and of executing the decrees and orders of the said courts, and to authorize him to issue the necessary process, and to proceed thereupon agreeably to the rules prescribed by the general regulations of government. Act XVII. 1841. sect. 1.

Deputy and assistant register.

981. Whenever the government deems it expedient to appoint any persons, not being covenanted servants, to the offices of deputy register or assistant register to either of the courts of nizamut adawlut, it is competent to such court to assign to such officer any duties at present performed by the register. Act VII. 1840.

Receipts and petitions.

982. It is competent to any judge of the court, to whom this duty is delegated by the court at large, to receive petitions of appeal, or any other petitions receivable by the nizamut adawlut, and to proceed thereupon as the regulations authorize, and direct; so that all such petitions are received in open court; and that no decision or final order be passed thereupon, which is repugnant to a previous decree or order of the court. Any one or more of the judges may also take the depositions of witnesses in open court, instead of causing the same to be taken by the register, in cases where this mode of examination is judged advisable; and, generally, the judges are authorized to regulate the mode and order of their own proceedings, as well as the execution of their process, subject to the rules prescribed by the regulations. All process issued from the court is to be signed by the register, under such instructions as are prescribed by the court for his guidance. Reg. II. 1801. sect. 13. Reg. VIII. 1803. sect. 5.

Depositions of witnesses how to be taken.

Court to regulate their own proceedings.

Process how to be issued.

Security for costs not to be taken.

Court may frame rules of practice,

983. In proceedings before either of the courts of nizamut adawlut it is not necessary to take any security for costs; and it is competent to them to frame such rules of practice for the due exercise of the criminal jurisdiction vested in them by the regulations, as may

which are to be submitted to government.

from time to time be found requisite. Such rules when framed are to be submitted to the governor general of India in council; and after they have been approved by him, they are to be of the same force as if they were inserted in this Act. Act XVII. 1841. sect. 2.

To be an open court.

Sittings.

Diary.

984. The court of nizamut adawlut is to be an open court, and is to meet as often as the state of business may require. The ordinary sittings of the court are to be holden once in each week, and special sittings are to be summoned when necessary. A regular diary is to be kept of the proceedings of the court; but is not to be recorded in English further than the court may find convenient and conducive to regularity. The court is to furnish attested copies and translations of its proceedings in cases where a reference may be competent to government. Reg. IX. 1793. sect. 68. Reg. II. 1801. sect. 13. Reg. VIII. 1803. sects. 5 and 6. Reg. VI. 1831. sect. 7, cl. 1.

Copies and translations of proceedings in cases referred to government.

Proceedings not to be kept in English further than is convenient.

985. The proceedings of the court are not required to be kept in English further than the court may find convenient and conducive to regularity; nor will copies of the proceedings be hereafter required except in cases of appeal to His Majesty in Council, or of reference to government, as prescribed by the regulations; in which cases attested copies and translations are to be furnished as heretofore. Reg. II. 1801. sect. 16.

Extent of cognizance.

986. The nizamut adawlut has cognizance of all matters relating to the administration of justice in criminal cases, and the police of the country; and is to submit to the governor general in council such regulations regarding these subjects as it may deem advisable. The court is to exercise all the powers that were vested in it, whilst it was stationed at Moorshedabad, and superintended by the late naib nazim, the Nawab Mahomed Reza Khan. Reg. IX. 1793. sects. 72 and 73. Reg. VIII. 1803. sect. 2. Reg. VI. 1831. sect. 6.

Futwas and sentences.

Sentences of court to be regulated by Mahomedan law.

987. The sentences of the court are to be regulated by the Mahomedan law, excepting in cases in which a deviation from it may be expressly directed by any regulation passed by the governor general in council. Reg. IX. 1793. sect. 74. Reg. VIII. 1803. sect. 9.

Duties of law officers and mode of taking futwas.

988. The Mahomedan law officers are to assemble at the office of the register three times in every week, or oftener if necessary; and the register is to lay before them the vernacular copies of the proceedings in the trials, that are referred by the sessions courts for the final sentence of the nizamut adawlut. After duly considering the proceedings, and previous to leaving the office of the register, they are to state in writing, at the foot of the record of each trial, whether the futwa of the law officer is consistent with the evidence, and conformable to the Mahomedan law; and if it be not, they are to state what futwa ought in their opinion to have been delivered, and to subscribe their names and affix their seals to their respective opinions. The register is to submit the proceedings, in the cases so revised by the law officers, to the nizamut adawlut at their next meeting; when the court, after perusing the proceedings of the sessions court, and the futwas of the law officers of both courts, is to pass the final sentence. Reg. IX. 1793. sect. 77. Reg. VIII. 1803. sect. 12.

989. Whenever, from the number of trials in reference, it is requisite for their speedy decision that they should be divided among the law officers for revision, it is competent to any one of the law officers to deliver a futwa thereupon. Provided, that if any one of the law officers, on revising the proceedings held upon the trial, does not concur with the law officer of the sessions court, before whom the trial was held, as to the conviction of the prisoner, he is not to write the futwa, until one or more of the other law officers of the nizamut adawlut can deliver the same in concert with him after perusal of the proceedings. Reg. VIII. 1808. sect. 7.

A single law officer may give futwa, unless he differs from law officer of sessions court.

990. But it is not necessary that a futwa be filed by the law officers in every case that is referred for the final sentence of the court; the judge or judges, by whom the proceedings are reviewed, are to exercise their discretion in requiring a futwa or otherwise, as appears to them expedient or necessary, excepting in cases in which exemption from the futwa is prescribed by section 5 of this regulation; [i. e. cases in which persons not professing the Mahomedan faith claim to be exempted from trial according to the Mahomedan law. See para. 826.][a] Reg. VI. 1832. sect. 6.

But futwa need not be taken in every case. The judges may use their discretion in requiring a futwa.

991. On receipt of the proceedings upon trials referred to the nizamut adawlut in pursuance of section 2 of this regulation [*i. e.* cases in which the session judge differs from the futwa of his law officer] the Mahomedan law officers of that court are to write their futwas thereupon, as in other trials referred under the general regulations. Reg. XVII. 1817. sect. 3.

Futwa in cases referred on account of difference between the session judge and law officer.

992. In all cases of murder, mutilation, or severe personal injury, in which the heir of the slain, or the person injured, refuses to prosecute, the law officers of the nizamut adawlut are to be called on to declare what the futwa would have been in the event of their having prosecuted; and the judge or judges sitting on such trial are to pass sentence under the general regulations, and on a consideration of all the circumstances of the case, the same as if the parties had come forward to prosecute. Reg. IV. 1822. sect. 3.

If the heir or person injured in cases of murder, wounding, &c. refuses to prosecute.

993. In all trials transmitted by the sessions courts to the court of nizamut adawlut, in which the Mahomedan law officers of that court consider the prisoner or prisoners liable to discretionary punishment, they are to declare the same generally with a statement of the grounds on which the prisoners are adjudged by them subject to discretionary punishment, leaving the measure of punishment, in such cases, to be determined by the judges of the nizamut adawlut under the provisions contained in this or any other existing regulation. Reg. LIII. 1803. sect. 7, cl. 1.

Futwa of discretionary punishment to be given generally.

(*a*) Under the above rule the court now never call for a futwa, except when, in a case tried in a sessions court before a law officer, the session judge recommends a sentence of death, or in any special case where a reference is thought necessary. But the rules in sect. 4, Reg. IX. 1831, regarding the powers of a single judge, had previously rendered unnecessary the futwas of the law officers of the nizamut adawlut, except in the cases above noted; for by them (see paras. 1023 *et. seq.*) a single judge may reverse or alter the sentence of the lower court in favor of the prisoner in called for trials; and may pass any sentence short of death in concurrence with the lower court in referred trials; and is required to send on the case to another judge only when he differs from the session judge as to the conviction, or would pass a higher sentence than the latter recommends; without any reference to the futwa given in the nizamut adawlut. On this account it has been considered unnecessary to give in the text the rules of sect. 4, Reg. XVII. 1817, and sects. 2 and 7, Reg. IV. 1822, which provide for cases in which the judges of the nizamut adawlut would pass sentence of conviction or acquittal in opposition to the futwas of their law officers.

Rules enacted for sessions courts in regard to discretionary punishment are equally applicable to trials before the nizamut adawlut.

* *v.* ¶ 883 *to* 887.

994. The several provisions made by clauses 2, 3, 4, 5, and 6* of section 2 of this regulation for the guidance of the sessions courts, in cases wherein the law officer declares a prisoner or prisoners liable to discretionary punishment; and wherein a specific punishment has been fixed and declared by the regulations; or wherein the specific penalties of the Mahomedan law are withheld, on the ground of the evidence against the prisoner not being such as the law requires for a sentence of *hudd* or *kisas*, though sufficient to convict the prisoner on strong presumptive proof; or wherein the sentence of *hudd* or *kisas* is barred against the prisoner, though fully convicted, by some special exception or distinction, not affecting the nature and criminality of the offence, and evidently repugnant to the principles of equal justice; are to be considered equally applicable to all cases of the same descriptions wherein the law officers of the nizamut adawlut, in any trials before that court, declare the prisoner or prisoners liable to discretionary punishment; and the judges of that court are to pass sentence accordingly, after taking a second futwa from their law officers in cases which may require it. Reg. LIII. 1803. sect. 7, cl. 2.

Discretionary punishment in cases in which the crime has not been provided for by the regulations or by the Mahomedan law.

995. In trials referred to the nizamut adawlut, under cl. 7, sect. 2 of this regulation, viz. when the crime of which the prisoner is convicted, and for which he is declared liable to discretionary punishment, has not been specifically provided for, either by the regulations, or by any stated penalty in the Mahomedan law, the judges of the nizamut adawlut, provided the offence be punishable at discretion under the Mahomedan law, and they are satisfied of the conviction of the prisoner, are authorized to pass such sentence upon the prisoner, not extending to capital punishment, as they may deem adequate to the crime of which he is convicted, and consonant to the general principles of justice, on due consideration of all the circumstances of the case. The court is at the same time to propose to the governor general in council a regulation to fix and declare the specific punishment of any crime of magnitude, which may be found not to have been specifically provided for either by the Mahomedan law or by the regulations, and which may appear to call for an express denunciation of the penalty to be incurred by committing the same. Reg. LIII. 1803. sect. 7, cl. 3.

In such cases of magnitude the court is to propose new regulation to government.

Sentences to be passed in cases of dacoity and theft.

996. The provisions contained in sections 3, 4, and 5 of this regulation [regarding dacoity and theft] are to govern the sentences of the nizamut adawlut in the cases therein specified; and the judges of that court are authorized to adjudge the stated punishment, whatever may be the futwa of their law officers; provided that it declares the prisoner or prisoners to have been convicted of the crimes incurring the stated penalties, either on free and voluntary confession, or on the testimony of credible witnesses, or on strong circumstantial evidence (sufficient to establish *ghalibzun* or violent presumption of guilt); and provided the judges of the nizamut see no cause to disapprove such conviction of the prisoner or prisoners; or to mitigate, or remit the specified punishment. Reg. LIII. 1803. sect. 7, cl. 4.

Rules for carrying into effect the sentence of the court.

997. The register, within three days after passing of the final sentence, or sooner if practicable, is to transmit a copy of it under the seal of the nizamut adawlut, and attested with his official signature, to the session judge, who is immediately to issue a warrant to the magistrate to cause the sentence to be carried into execution. The magistrate, upon the

receipt of the warrant, is to cause the sentence to be executed without delay; and to return the warrant to the session judge, with an endorsement attested by his official seal and signature, certifying the manner in which the sentence has been executed. All warrants so returned are to remain in the sessions court, excepting warrants for the infliction of capital punishment, which are to be forwarded by the judges to the nizamut adawlut. Reg. IX. 1793. sect. 78. Reg. VIII. 1803. sect. 13.

Power to call for and revise trials.

Court may call for trials of any subordinate court; but cannot enhance the sentence passed.

998. It is at all times lawful for the courts of nizamut adawlut to call for the records of any criminal trials of any subordinate court, and to pass upon them such orders as may seem fit. But it is not lawful for the nizamut adawlut in cases so called for, or for any criminal court in appeals preferred to it, to enhance any punishment awarded, or to punish any person acquitted by the court below. Reg. IX. 1807. sect. 24. Act XXXI. 1841. sects. 3 and 4.

In a jurisdiction to which a superintendent of police has not been appointed, the court cannot take cognizance of miscellaous cases.

Government may pass any orders in any case.

999. In any jurisdiction, in which a superintendent of police has not been appointed under Act XXIV. 1837, cases of a miscellaneous nature, other than criminal trials, are not cognizable by the nizamut adawlut. In such miscellaneous cases an appeal lies from the magistrate to the commissioner of circuit in his capacity of superintendent of police, whose decisions are not open to revision otherwise than on a regular suit in a civil court. Provided, however, that this is not held to preclude the government from issuing any orders that they may see fit, consistently with the existing regulations, in any case that may be brought to their notice by the nizamut adawlut or otherwise. Reg. IX. 1831. sect. 3. Act XXIV. 1837. sect. 3.

Definition of criminal trials and miscellaneous cases in the above.

1000. The interference of the nizamut adawlut in such jurisdiction is restricted by the above to "criminal trials," i. e. cases involving a judicial investigation on a criminal charge and a judicial award. In all other cases which are contradistinguished as "miscellaneous cases" the appellate authority is transferred to the commissioner of circuit, with a reservation of a further appeal to the government, in those cases in which the party deeming himself aggrieved may prefer that course, instead of resorting immediately to the civil courts [as in cases of dispossession or other actionable cause], or in which the nature of the case will not admit of the remedy by civil action [as in the case of alleged injustice towards native officers of government by magistrates or others to whom they are subordinate]. For the former the ordinary remedy by suit is provided; for the latter an appeal to government. Const. Nos. 914, and 662.

Revision of case tried by a magistrate.

1001. A trial having been held in Assam before the magistrate, and referred to the nizamut adawlut by the commissioner on a revision of the magistrate's proceedings without holding a fresh trial, it was held competent to the court to pass sentence on the prisoner in the absence of such trial by the commissioner. N. A. R. vol. 5, page 8.

Revision of interlocutory orders to be made at the English sittings.

1002. Cases, in which interference with any order issued by an inferior court, prior to its final judgment in such trials, appears necessary, are to be brought before the court at its general English sittings. Const. No. 662.

Power of mitigation of sentence of subordinate court;

* v. ¶ 1018.

1003. The powers vested in the nizamut adawlut by sect. 3. Reg. XIV. 1810 [to grant such remission or mitigation of punishment, as appears just and proper, according to the evidence and circumstances of the case, and to pass sentence accordingly*] are applicable to

all cases in which that court revises a sentence passed by a sessions court, or magistrate, or assistant to a magistrate, in pursuance of the above, or under any other provision in the regulations. It is also applicable to any cases in which the court of nizamut adawlut sees reason to revise a sentence passed by that court, and to remit any part of the punishment adjudged. But this discretion is not to be exercised without strong and sufficient grounds, to be recorded at large upon the proceedings of the court. Reg. XIV. 1810. sect. 4.

and of their own sentence.

When judges differ in opinion.

Rules for awarding sentence, when the judges differ.

1004. In a criminal trial, wherein differing opinions have been recorded, the sentence should issue according to the opinions of the majority, as regards each prisoner; and, where the difference relates merely to the amount of punishment, the most lenient sentence should be adopted. Const. No. 952.

Difference of opinion to be settled by majority

1005. In the event of any difference of opinion arising when three judges are present in court, the voices of the majority are to determine the question; but if a difference of opinion arises when two judges only are present in court, the question then before the court is to be postponed for adjudication, until a third judge attends. Reg. II. 1801. sect. 13. Reg. VIII. 1803. sect. 5.

Concurrent opinion of two judges is final.

1006. The concurrent opinion of two judges, who agree in all points of the decision, is final and conclusive, though it differs from the opinions of two other judges who do not agree with each other. Const. No. 526. N. A. R. vol. 2, page 121.

When the judges present cannot decide, the case is to be referred to the other court of nizamut adawlut.

1007. Whenever, and so often as only one judge is present with the Western court, or if any difference of opinion arises when only two judges are present, in any matter requiring under the existing regulations the concurrent voices of two judges, the question is to be referred for the determination of one of the judges of the Calcutta court of nizamut adawlut. Provided moreover that, in such case, it is sufficient that the judge, to whom the point is referred, forms and records his judgment on a careful perusal and consideration of the proceedings, and without requiring the attendance of the parties or their vakeels. Reg. VI. 1831. sect. 7.

1008. Whenever and so often as there are four judges present at the court of nizamut adawlut at Calcutta, and there is an equality of voices in cases which require a decision by the majority, it is competent to refer the question for decision to a judge of the nizamut adawlut in the Western provinces; and it is sufficient that the judge, to whom the point is referred, should form and record his judgment on a careful perusal and consideration of the proceedings, and without requiring the attendance of the parties or their vakeels. Reg. IX. 1831. sect. 9.

Examples of cases in which the judges did not agree as to the sentence to be passed on all the prisoners, and sentence was consequently issued according to the majority of voices in regard to each individual.

1009. In a case of four prisoners charged with dacoity, the second judge voted for the conviction of No. 1, and the acquittal of the other three; the fourth judge for the conviction of all; and the officiating judge for the conviction of No. 1 as a receiver only, and for the acquittal of the other three. Under these circumstances, sentence was issued under the signature of the three judges conformably to the majority of opinions in regard to each individual; No. 1 was convicted of dacoity, and the other three were acquitted. N. A. R. vol. 2, page 40.

1010. In a case of two prisoners, there being three judges for the conviction and one for the acquittal of the first, and two for the acquittal and two for the conviction of the second; another judge took up the proceedings with reference to the latter prisoner only, and being of opinion that he should be acquitted, an order for his release was issued. In deference to the majority, this order was signed by two judges, one of whom had originally given his voice for conviction. N. A. R. vol. 2, page 483. So, in another case, vol. 2, page 485.

1011. In a case of nine prisoners, the court not being able to decide by a majority of voices as to the sentence to be passed on all, one of the judges modified his opinion by reducing the term of imprisonment proposed by him to be awarded to one of the prisoners, in order to admit of the issue against each individual of a sentence by a majority of the court. N. A. R. vol. 3, page 76.

1012. On the trial in the Calcutta Court of two prisoners, charged with murder, three judges were for a sentence of death, and one for a sentence of imprisonment for life, against the first prisoner; and two judges for death, and two for perpetual imprisonment against the second. The case was referred to the Western Court, when, one judge concurring in sentencing the second prisoner to imprisonment for life, he was sentenced accordingly, and the first prisoner was executed. N. A. R. vol. 4, page 154.

Power of mitigation and pardon.

Power to remit or mitigate the punishment declared by the regulations.

1013. In all criminal trials before the nizamut adawlut, if a prisoner, or prisoners, are in any case, under the provisions of the laws and regulations in force, liable to a more severe punishment than appears to the court equitable, it is competent to two or more judges (but now a single judge under the provisions of sect. 4, Reg. IX. 1831*) to grant such remission, or mitigation of punishment, as appears just and proper, according to the circumstances of the case, and to pass sentence accordingly; provided that in all such cases the court is to record the grounds upon which a remission or mitigation of punishment is adjudged, under the discretion hereby vested in them; and they are to communicate the same to the sessions court before whom the trial was held, with directions to cause the same to be made known in open court to the prisoner or prisoners concerned. Reg. XIV. 1810. sect. 3.

* v. ¶ 1023 et. seq

Reason of such to be recorded and notified to the sessions court.

1014. The nizamut adawlut are competent to mitigate a sentence on judicial grounds, apparent on the record, and strictly connected with the case, and not extraneous. If the ground of mitigation is personal to the prisoner, the prerogative of mercy rests with government. Const. No. 350.

The court cannot remit on grounds personal to the prisoner.

1015. When a criminal, who has been sentenced to suffer death, appears to the nizamut adawlut to be a proper object for mercy, they are to submit his case to government; and, according to the circumstances of it, either recommend a pardon to be granted to him, or such commutation of the punishment as to the court seems proper. Reg. VIII. 1803. sect. 14.

The court may recommend for pardon persons sentenced to death

1016. Nothing contained in this, or any other regulation, is to be understood to preclude the governor general in council from the exercise of the power reserved to the chief executive authority in all cases, when it appears proper to pardon any person charged with, or convicted of a criminal offence. In all such cases, a letter from the secretary to

Government may in all cases pardon a person charged with, or convicted of a criminal offence.

government, addressed to the register of the nizamut adawlut, or to any magistrate, or to any other local authority, is to be deemed a sufficient voucher of the pardon thereby notified, and is to be observed accordingly.(a) Reg. XIV. 1810. sect. 6.

Sentence is to be passed in cases recommended to government for pardon.

1017. In cases of clear conviction, when, from considerations of policy or other reasons, it is deemed expedient not to punish the offenders, sentence should be passed, and a reference made to government, before directing execution of such sentence, to afford the government an opportunity of exercising its prerogative of pardon. N. A. R. vol. 5, page 31.

(a) The following cases in which prisoners have been pardoned by government after conviction, are taken from the Nizamut Adawlut Reports :—

A murder was committed in Cuttack on the very day the province was declared subject to the British laws ; the prisoners therefore might, as they pleaded, have been ignorant of the fact ; and in consideration of this circumstance, and of the habits of lawless violence which prevailed with impunity under the Mahratta government, the prisoners were discharged without punishment. Vol. 1, page 106.

A sentinel, in the service of a Mahratta chief who was on a pilgrimage to Benares, was convicted of wilful murder, in cutting down a man (supposed to be a thief) who did not answer to a third challenge, in conformity to a general order to that effect from his superior. The prisoner was pardoned on the consideration that he acted under a mistaken sense of duty. Vol. 1, page 158.

A Rajkoomar was convicted of destroying his infant daughter, and sentenced to suffer death. But, as it appeared that the proclamation for preventing the murder of new-born children, directed by sect. 11, Reg. III. 1804, had not been published in the pergunnah in which the prisoner resided, and as the magistrate had but recently interfered in the police of the pergunnah so that it was not improbable that the prisoner might have been ignorant of the prohibition of the British government, he was pardoned. Vol. 1, page 209.

An attack was made on a small village in Arracan by a party of hill people of a distinct tribe, in which fourteen persons were murdered, nine others severely wounded, and five carried off into captivity. No probable motive for the outrage was elicited, the suffering party being either really ignorant or disinclined to tell, and the defendants not adducing any. Out of 24 prisoners 15 were convicted and sentenced to death or imprisonment in banishment for 14 years ; but as it seemed clear that the prisoners all surrendered under an implied assurance of their obtaining forgiveness, and that it was quite impossible that they could have been constrained if they had not been persuaded to give themselves up, and as therefore it would have been as unjust as impolitic to carry the judgment into effect, they were pardoned. Vol. 5, page 31.

In the following case the nizamut adawlut remitted the punishment on judicial grounds :—A prisoner was convicted on violent presumption of being an associate in Wuzeer Ali's conspiracy. But the orders of government on a former and similar occasion having given him hopes of exemption from punishment, and the evidence showing some extenuating circumstances in his favor, orders were issued for his release. Vol. 1, page 227.

The two cases quoted beneath are apparently opposed to the rule of Const. No. 350 (¶ 1014), as the sentences of punishment were in both remitted on grounds purely personal to the prisoner: but they are probably not considered precedents, as that construction was ruled subsequently to the dates of both:——A prisoner was convicted of cutting off his wife's hand under the impulse of anger ; but it appeared that he had just cause for anger, and that the actual violence was unintentional ; and the wife earnestly entreated that her husband should be pardoned. Under these circumstances, and as the futwa declared the prisoner unconditionally released from every penalty in consequence of the injured party withdrawing her claim, he was discharged without punishment. Vol. 1, page 344.

Two females were convicted with their husbands of knowingly receiving stolen property ; but from the influence known to be exercised by husbands over their wives, and under a futwa of discretionary punishment, the court did not think fit to award the females any punishment. A third female, aged 70 years, was convicted of the same offence, and released in consideration of her age and infirmities. Vol. 1, page 353.

Powers of single judge.

Power of single judge to hold sittings; but if he differs from session judge, the case is to be laid before another judge.

1018. The sittings of the court are to be held before two or more judges, whenever the number of trials and other business depending before the court may admit of it. But whenever the number of depending trials renders it necessary for their speedy determination, that the judges should hold separate sittings, it is competent to any one judge to hold a sitting of the court, and to pass orders or sentence upon any trial under reference to it, in conformity with the regulations; provided that, if the single judge so sitting does not concur with the session judge, before whom the trial has been held, with respect to the conviction of the prisoner, he is not to pass sentence until one or more of the other judges of the court can sit with him upon the trial. Reg. VIII. 1808. sect. 6.

So, if the sitting judge does not concur in the mitigation proposed by the session judge.

1019. The above provision, which includes all instances of a difference of opinion upon the guilt or innocence of a prisoner, is extended to all cases in which the session judge, before whom the trial has been held, may recommend a mitigation of punishment, upon grounds which a single judge, holding the sitting of the court, deems insufficient. In such cases the opinion of another judge of the nizamut is to be taken upon the mitigation proposed by the session judge; and in giving such opinion he is to examine the proceedings upon the trial as far as is necessary to enable him to form a judgment upon the stated grounds of mitigation. Reg. XVII. 1817. sect. 17.

A single judge may hold sittings on miscellaneous business;

but cannot reverse or alter a former decision of the court.

1020. The above rule authorizes a sitting of the court before a single judge (when two or more judges are not able to attend) upon miscellaneous references to or from the sessions courts and magistrates, upon petitions receivable by the nizamut adawlut; and generally upon all matters appertaining to the cognizance of that court under the regulations in force. But a single judge cannot in any case by his single authority reverse or alter a former decision or order of one or more of the judges of the court. Reg. XXV. 1814. sect. 17.

Power of single judge if he concurs in the mitigation of punishment recommended by the session judge.

1021. When a session judge, referring a criminal trial to the nizamut adawlut, states circumstances of extenuation, or other special grounds for a mitigation of punishment, in behalf of any prisoner or prisoners, and a single judge of the nizamut, holding the sitting of that court, concurs in the mitigation of punishment recommended by the sessions judge, it is competent to the judge so concurring to grant the proposed mitigation, and to pass sentence accordingly; in like manner as two judges are competent to grant a mitigation or remission of punishment, whenever it appears just and proper, under the provisions of sect. 3, Reg. XIV. 1810.* Reg. XVII. 1817. sect. 18, cl. 1.

* r. ¶ 1013.

If a single judge deems it just and proper to mitigate, though not recommended by session judge.

1022. A single judge of the nizamut, holding the sitting of that court on a criminal trial, is further declared competent to mitigate or remit any part of the prescribed punishment, if it appears to him just and proper on the grounds stated in the above provision, although a mitigation or remission is not proposed by the judge referring the trial; but in such cases the grounds on which a mitigation or remission of punishment is granted, are to be recorded and communicated to the sessions court for the information of the prisoner or prisoners concerned. Reg. XVII. 1817. sect. 18, cl. 2.

Single judge may reverse or alter the sentence of the lower court in

1023. It is competent to a single judge, on a revision of the proceedings held on any criminal trial by any court of inferior jurisdiction, to reverse or alter the sentence or order passed thereon, provided such reversal or alteration is in favor of the accused, whether for

favor of the prisoner.

acquittal, mitigation of punishment, or otherwise, and does not enhance the punishment to which he has been sentenced. Reg. IX. 1831. sect. 4, cl. 2.

Example.

1024. In a trial for murder the law officer of the circuit court acquitted the prisoner; the commissioner dissenting referred the trial with his opinion that the prisoner was guilty of affray with homicide; the law officer of the nizamut also acquitted; but the judge, who revised the trial, deemed the prisoner convicted of manslaughter. The court held that he was competent to dispose of the case without calling in another judge. Const. No. 674.

When a case is referred, because the session judge differs from the law officer in regard to some only of the prisoners.

1025. Whenever a criminal trial is referrible to the nizamut adawlut by reason of the commissioner of circuit or session judge differing in opinion with his law officer as to the conviction or acquittal of one or more prisoners included in the same trial, the sentence in which in regard to the other prisoners is within his competence under the regulations in force, it is necessary for the nizamut adawlut, or for a single judge of that court, to revise only such parts of the proceedings on the trial as relate to the prisoner or prisoners in respect to whom the reference is made. Reg. IX. 1831. sect. 4, cl. 3.

Single judge may convict or acquit in concurrence with the session judge, except for capital punishment.

1026. If a single judge of the nizamut adawlut concurs in opinion with the commissioner of circuit or session judge, whether for conviction or acquittal, it is competent to such single judge to pass a final sentence, whatever may be the futwa of the law officers of the nizamut, except for capital punishment, which as heretofore, in all cases, requires the concurrent opinion of two judges of the court. Reg. IX. 1831. sect. 4, cl. 4.

But single judge cannot convict in opposition to session judge.

1027. Provided, however, that it is not competent to a single judge to convict and sentence to punishment any prisoner in opposition to the opinion of the commissioner or sessions judge, if the latter is for acquittal, or otherwise in favor of the prisoner. Reg. IX. 1831. sect. 4, cl. 5.

Nizamut may revise the whole proceedings.

1028. In the cases above referred to, the nizamut adawlut is not precluded from revising the whole proceedings, if there appear sufficient grounds for so doing. Reg. IX. 1831. sect. 4, cl. 6.

Single judge may always require the opinion of his colleagues.

1029. A single judge may always, in any case of difficulty or importance in which he deems it expedient and proper that the matter at issue should be decided by two or more judges of the court, record his opinion thereon, and refer the case to another judge. Reg. IX. 1831. sect. 4, cl. 7.

Sentence of death cannot be passed by a single judge.

1030. In trials referred to the nizamut adawlut, which include one or more prisoners liable to a sentence of death, it is not competent to a single judge to pass the final sentence, which in all such cases is to be passed by at least two concurring judges of that court. Reg. XII. 1825. sect. 8.

Interference with former order of the court.

How far the court may modify or annul any previous order or sentence of the court. The Western court

1031. The jurisdiction of the Presidency Court of Nizamut Adawlut over the province of Benares, and the ceded and conquered provinces, having been transferred by Reg. VI. 1831 to the Western Court, it was held that the latter court possesses the whole of the powers, in regard to the revision of orders and sentences passed by the court at the presidency before the enactment of that regulation, which could have been exercised by the latter previously to the separation of the jurisdictions. That is to say, the judges of the Western Court are competent, whenever it appears to them advisable on the representation

either of one of their own body, or any other constituted criminal authority, to revise, in full court, the proceedings of one or more judges in any case connected with the districts under their jurisdiction, as well as to modify or annul the sentence or order previously passed, either on the grounds of additional evidence or other circumstance throwing a new light on the case, or generally with reference to the previous decision, provided that no sentence of a criminal court can be modified to the prejudice of the prisoner or prisoners included in it. This power may be exercised by the Western Court, whether the sentence was passed by former judges of the Western Court, or by any of the judges of the Lower Court. If the judge, or any of the judges who passed the original sentence, is present, the revision is to be made by him; provided that, if two or more judges concurred in the order or sentence, and any of them is not present, the case must be brought before the whole court, if it is proposed to modify or annul the order or sentence. Const. Nos. 799 and 819.

has the same powers as the Calcutta court.

If the judge who passed the original sentence is present; or, if absent.

1032. A petition having been presented to the Nizamut Adawlut, praying for the release of a prisoner formerly sentenced by the court, it was held that they had no power to interfere with the sentence, on the ground of their entertaining a difference of opinion as to the merits of the case, or as to the quantum of punishment awarded. N. A. R. vol. 2, page 477.

But former sentence cannot be altered on the ground that the present court differs as to the merits of the case.

1033. In a case, where a prisoner had evaded justice at the time when his accomplices were tried, but on his being afterwards apprehended and brought to trial circumstances came out which induced the belief that the offence previously charged had been exaggerated, it was decided that the judge, who passed sentence on the first trial, was competent, with the concurrence of his colleagues, to revise or modify the order passed by him without the interference of another judge. N. A. R. vol. 4, page 246.

A single judge, finding that he had passed sentence on an exaggerated statement, modified it with the consent of his colleagues.

1034. On the reference of a case of assault and murder perpetrated 15 years before, it was discovered that two prisoners implicated in the same transaction had been regularly tried, convicted, and sentenced to only one year's imprisonment, and that the sentence had been reported, as prescribed, to the nizamut adawlut, and confirmed as for a case of simple affray; the court held that it was not expedient to direct their re-apprehension with a view to their being tried and sentenced to a punishment adequate to the real merits of the case. N. A. R. vol. 3, page 164.

The court would not order the re-apprehension of persons sentenced 15 years before for affray, when they ought to have been punished for murder.

Miscellaneous.

1035. The nizamut adawlut is empowered to suspend from office any session judge, or magistrate, for wilful disobedience, or neglect of or false return to any process, rule, or order of that court; such suspension to be notified within ten days, with all relative proceedings and papers, for the determination of government. The nizamut adawlut is further authorized and directed to proceed upon reports from the session judges of neglect or misconduct by the magistrates, made in pursuance of sect. 63, Reg. IX. 1793 (*Ced. Prov.* sect. 30, Reg. VII. 1803)*; as well as upon reports from the session judges, and magistrates, of neglect or misconduct by their assistants, made in pursuance of sect. 10, Reg. XIII. 1793 (*Ced. Prov.* sect. 13, Reg. XII. 1803)†; in which cases, after such inquiry as is judged necessary, in proof or explanation of the circumstances stated, the court is to report the case, if it appears to require the notice of government, with a copy of all proceedings and papers received on the subject of it, for such orders as may be judged proper. And in all cases wherein a covenanted servant of the Company employed in any of the criminal courts, or in any office of police, appears to the nizamut adawlut to have been guilty of neglect of

Power of nizamut adawlut to suspend a session judge; and course of procedure when a session judge, or magistrate, or other covenanted officer is guilty of disobedience, neglect, &c.

* *v.* ¶ 501.
† *v.* ¶ 583.

duty, or of other misconduct, not expressly provided for by the regulations, that court is either to report the same to government; or, if the case appears to involve an error of judgment only, or a slight default, for which an admonition of the court is deemed a sufficient correction, to advise the party of his default, and to admonish him accordingly. Reg. II. 1801. sect. 14. Reg. VIII. 1803. sect. 24.

Order of court is not binding on civil court.

1036. A summary order of the nizamut adawlut to the magistrate is not binding on the civil courts. Const. No. 609.

The court would not cancel a decree of a civil court proved in a criminal trial to have been obtained by fraud.

1037. It appearing in the course of a criminal trial, that a decree had been obtained in a civil suit by means of fraud, the court did not think proper to cancel the decree; but directed that the parties, against whom it had been obtained, should be furnished, on their application, with a copy of their sentence for presentation to the court of appeal, which court could then use their own discretion in passing such orders as might prevent an unjust execution. N. A. R. vol. 3, page 93.

Vakeels.

1038. The vakeels of the sudder dewanny adawlut may present petitions to the nizamut adawlut. Const. No. 563.

The nizamut adawlut is to prescribe reports, statements, &c.

1039. The nizamut adawlut is, from time to time, as circumstances require, to prescribe the forms, and to fix the periods of transmission, and mode of preparation of all reports, calendars, registers, or other statements, to be furnished by the criminal courts, or by the judicial or police officers. But this is not to be construed to supersede the necessity of the preparation and transmission of the reports and statements prescribed by the regulations, until the nizamut adawlut specially prescribes any alteration in, or directs the discontinuance of, any particular report or statement. Reg. VII. 1829. sect. 3.

Precepts.

Rules for the issue of precepts to subordinate courts, and for returns thereto; prescribing forms of a precept calling for proceedings with return;—a precept requiring no return;—a certificate when a full return cannot be submitted within the prescribed period;

* *v. Appendix A. Nos.* 30 *and* 31.

1040. *First.* All precepts are to be drawn out in prescribed forms*. *Second.* All orders directing the issue of precepts are to state whether a return is required, and within what period. *Third.* The period is to be calculated from the date of the despatch of the precept from the office of the nizamut adawlut. *Fourth.* Precepts and returns are to bear the dates of despatch, and not the dates of the proceedings which accompany them, and the subordinate courts are expected to despatch their returns within the period allowed. *Fifth.* When a judge of the nizamut adawlut has signed a chitteh, directing the issue of a precept, it is the duty of his peshkar to prepare a copy of the roobukaree, duly attested by his signature, together with such other papers as should accompany the same, and to send them by a mohurrir to the English clerk in the precept department within seven days from the date on which the chitteh was signed by the judge. The roobukaree is to bear a list of the accompanying papers at the foot of it; and the peshkar is responsible that they are correct and complete. *Sixth.* The English clerk is to note on each proceeding the date of receipt, and after preparing the precepts to submit them for the register's signature, he is then to enter them in the proper books, and to despatch them on the same day if possible; if not despatched till the next day, or later, the date of the precepts is to be altered to correspond with that of despatch. *Seventh.* If the officer to whom the precept is addressed finds it impracticable to send a complete return within the prescribed period, he is to transmit a proceeding, with a certificate, according to the prescribed form†, stating the reason, and the additional period which he requires to carry the court's orders into effect. *Eighth.* Such

† *v. Appendix A. No.* 33

returns and certificates, when received in the office of the nizamut adawlut, are to be sent by the precept clerk, after having been endorsed and entered in the proper books, to the peshkar of the judge by whom the precept was issued, who is to note on each the date of receipt, and to bring it forward in the usual course. *Ninth.* If the period allowed in a precept, together with the number of days occupied by the letter dak, expire before a return or explanatory proceeding and certificate is received, the register is to send a letter calling for explanation within a specified term; should this term also expire without receiving a reply, the circumstance is to be brought to the notice of the judge who issued the order, for such further measures, as he deems advisable. *Tenth.* The officer, by whom a return or certificate is sent, is to cause a list of the papers which accompany it to be written at the foot of the roobukaree. *Eleventh.* If the papers, &c., which should accompany a precept or return, are too heavy for the letter dak, they are to be sent by dak banghy, with a note stating the case and the precept or return to which they belong; the precept or return itself with the proceedings of the court being sent as usual by the letter dak. *Twelfth.* The precept clerk is to submit to the register, at the close of each week, a list of unanswered precepts and letters, to which returns are due. C. O. Nos. 160, and 174 of vol. 2.

and a reply to a precept requiring no return.

1041. Whenever a session judge finds it necessary to make a reference to the court, connected with precepts not requiring returns, for the purpose either of communicating any information or remarks, or of requiring further instructions, he is to adopt a prescribed form.* C. O. No. 212 of vol. 2.

* *v. Appendix A. No.* 32.

SECTION XXX.

OF SENTENCE OF TRANSPORTATION OR BANISHMENT.

The nizamut adawlut may sentence to transportation any person sentenced to imprisonment for life.

1042. The nizamut adawlut are authorized, under the discretion in this respect allowed by the Mahomedan law, to order any prisoner, sentenced to imprisonment for life, to be transported to some place beyond sea; and the magistrates, at every jail delivery, are to cause a written proclamation to be read, and affixed in their cutcherries, as well as in the cutcherries of their police officers, notifying, that all persons who are sentenced to be confined for life for murder, dacoity, robbing, plundering, arson, or any other crime of a heinous nature, are liable to transportation to some place beyond sea by order of the nizamut adawlut. Reg. IV. 1797. sect. 10. Reg. VIII. 1803. sect. 18.

And should always sentence to transportation, unless there are special reasons.

1043. Whenever the sudder court sentences any offender to imprisonment for life, it is at the same time to sentence such offender to transportation beyond sea for life, unless there are special reasons inducing the court to think such prisoner not a proper subject for transportation, which special reasons the court is to record. Act XIV. 1844. sect. 1.

If session judge sentences to, or recommends a sentence of imprisonment for life, a single judge of the nizamut adawlut is to pass sentence of transportation.

1044. Whenever any offender has been sentenced in the first instance by a commissioner of circuit, or session judge, to imprisonment for life, or whenever a commissioner of circuit or session judge has recommended that sentence of imprisonment for life be passed upon any offender, it is competent to a single judge of the sudder court, and he is directed, to sentence such offender at the same time to transportation beyond sea for life, unless there are special reasons inducing him to think such offender not a proper subject for transportation, which special reasons he is to record. Act XIV. 1844. sect. 2.

Convicts cannot be transported for a limited period. Session judge always to add transportation to imprisonment for life.

1045. Transportation beyond sea is restricted to convicts sentenced to confinement for life; and in all instances wherein a session judge passes a sentence of confinement for life against a prisoner, he is at the same time, if he deems the prisoner a proper object of transportation beyond sea, to adjudge him or her to be transported for life. Reg. LIII. 1803. sect. 8, cl. 2.

The court cannot exempt from transportation except in the way of mitigation.

1046. It is not competent to the nizamut adawlut (except in the exercise of their general powers of mitigation, where they may deem the object worthy of it) to exempt from transportation an individual convicted of an offence for which the regulations specifically prescribe that punishment. N. A. R. vol. 3, page 1.

Transportation a more severe sentence than imprisonment for life.

1047. Imprisonment in transportation beyond sea for life, is considered a more severe sentence than imprisonment for life in the Allipore jail. N. A. R. vol. 5, page 80.

Convicts not considered proper objects of transportation, or imprisoned for a limited period, may be sentenced to banishment.

1048. In the cases of convicts sentenced to confinement for life, whom the courts of sessions and nizamut adawlut do not consider proper objects of transportation beyond sea under the above provisions; as well as in all cases of convicts sentenced to imprisonment for a limited period; the court by whom the sentence is passed, if it deems the same proper on consideration of the prisoner's offence, may adjudge him to be banished, during the period of his sentence, from the district in which his place of abode is situated, and to be kept to hard labor on the public roads, or other public works, in any other district, to which he may be removed. Reg. LIII. 1803. sect. 8, cl. 3.

Magistrates cannot sentence any person to banishment.

1049. Magistrates are not competent, under the regulations, to sentence vagrants, or persons convicted of specific offences, to expulsion from the British territories, or to banishment from the city or district in which they have been apprehended. C. O. No. 159 of vol. 1.

SECTION XXXI.

OF CONTEMPT OF COURT.

Persons are punishable for using menacing gestures or expressions, or otherwise obstructing justice in open court.

Appeal from award of punishment in such cases

Persons amenable to supreme court may be punished under this Act, or indicted

1050. All persons whatsoever, whether generally amenable to the courts of the East India Company, or otherwise, using menacing gestures or expressions, or otherwise obstructing justice in the presence of any magistrate, joint magistrate, or other officer under a magistrate empowered to try criminal cases, or any superior or inferior court, civil or criminal, of the East India Company, are liable to be fined by the authority whose proceedings are obstructed to any amount not exceeding 200 rupees, or in case such fine is not paid to be imprisoned for any period not exceeding one month. Provided that from the award of punishment in such cases an appeal may lie, if preferred within one month, to the authority, civil or criminal, appointed by law to hear appeals in all other cases from the decisions of the officer by whom the fine was imposed. And provided also that notwithstanding anything in this Act it is lawful to indict any person amenable to Her Majesty's supreme courts as for a misdemeanor in any of the cases aforesaid sustainable before this Act, if no proceeding has been had against the offender in the court where the offence was committed, but not otherwise. Act XXX. 1841. sect. 1.

The magistrate is to carry into effect the awards of revenue authorities.

1051. The revenue authorities may also in such cases impose a fine of 200 rupees, or one month's imprisonment in the civil jail in lieu thereof. Such orders, as well as sentences passed under the above section, are to be carried into effect by the magistrate, on application being made to that officer, in the usual mode. Act XXX. 1841. sect. 2.

Evasion of process is not punishable as a contempt

1052. Evasion of a magistrate's process is not punishable as a contempt under the above provisions, which are applicable solely to contempts committed in open court. *(a)* Const. No. 619.

Nor falsely aspersing the character of a public officer in a petition.

1053. Under the above provisions, which repeal so much of Reg. XII. 1825, as relates to contempt of court, a person is no longer punishable as for that offence (as is ruled in Const. No. 1098) who, in a petition to a session judge in appeal from the orders of a magistrate, falsely and maliciously asperses the character of that officer. See Index to the constructions, heading "contempt," No. 3, page 25.

Nor prevarication in a witness

1054. The above Act is the only law under which contempt of court can now be punished, and as wilful and designed prevarication in a witness does not appear to be correctly classable under the "obstructions to justice," rendered punishable by the above enactment, that offence cannot be punished as a contempt of court, and Const. No. 1177, is rescinded. C. O. No. 128 of vol. 3.

(a) The above is a construction of Reg. XII 1825, but is equally applicable to Act XXX. 1841. For rules regarding evasion of process, see the section on that subject in the next chapter.

SECTION XXXII.

OF COMPROMISE, AND IBRA.

Compromise

No private compromise is to be received by a magistrate in heinous crimes.

1055. Excepting in cases of a trivial nature, such as abusive language, slight trespasses, and inconsiderable assaults or affrays, no razeenamah is to be received without the special sanction of the magistrate; nor is any private compromise to be admitted by the magistrate in crimes of a heinous nature, such as on conviction require exemplary punishment for the ends of public justice. Reg. IX. 1807. sect. 8.

Or by any other court.

1056. The principle of the prohibition, contained in the above clause, is applicable to, and obligatory upon, the whole of the criminal courts. A session judge, therefore, would not be justified in admitting a compromise in crimes of such serious nature; especially crimes recognised as such in the regulations, and when it has been expressly directed that the offenders should be brought to trial before the criminal courts. Nor can he in any case admit a formal razeenamah to bar the trial of a commitment made by a magistrate; both as there is no provision for such in the existing regulations, and as the established practice of discharging the prisoner on acquittal, when evidence is not adduced for his conviction, and the ends of public justice do not require a postponement of the trial for further evidence, appears preferable to the admission of a compromise, which might perhaps leave the prisoner exposed to a future prosecution. C. O. No. 187 of vol. 1.

Nor can a session judge admit a formal compromise of any case after commitment.

The Mahomedan law allows the ruling power to reject.

1057. The Mahomedan law recognises the right of the ruling power to punish serious offences for the ends of justice, although the injured individual waives his private claim. N. A. R. vol. 1, page 367.

Police officers cannot admit.

1058. The darogahs and other police officers are prohibited from admitting compromises or razeenamahs in any cases. Reg. XX. 1817. sect. 12, cl. 3.

In a case of theft, magistrate need not regard.

1059. Notwithstanding a private compromise of theft, the magistrate may, if he think proper, direct a public prosecution. Const. No. 318.

Civil courts cannot enforce the terms of a compromise between a thief and the person robbed.

1060. A compromise between a thief and the owner of the property, the consideration being on the one side forbearing to prosecute, and on the other restitution of the stolen property is a contract to which the civil court cannot give effect. Const. No. 318.

It was declared inadmissible in a case of rape.

1061. In a case of rape the court sentenced the prisoner to punishment, although a razeenamah was filed by the injured party in consequence of the prisoner's promise to marry her, as in so heinous an offence a compromise was deemed inadmissible. N. A. R. vol. 3, page 127.

Ibra.

In serious cases of bodily injury, the nizamut may punish notwithstanding the ibra of the prosecutor.

1062. In all cases of murder, mutilation, or severe personal injury, in which the heir of the slain, or the person injured, refuses to prosecute, the law officers of the nizamut adawlut are to be called on to declare what the futwa would have been, in the event of their having prosecuted; and the judge or judges sitting on such trial are to pass sentence under the general regulations, and on a consideration of all the circumstances of the case, the same as if the parties had come forward to prosecute. Reg. IV. 1822. sect. 3.

The nizamut would not admit ibra of kisas.

1063. The nizamut adawlut pay no regard to the circumstance of a prosecutor waiving his demand of *kisas* against the prisoner. N. A. R. vol. 1, page 86.

The ibra of the prosecutor does not vitiate the trial; but the government pleader should be ordered to prosecute.

1064. The prosecutor, in a trial for murder, having expressed in the sessions court his unwillingness to proceed with the charge against the prisoner, it was held that such declaration did not vitiate the trial. The court however were of opinion that, on such declaration being made, the session judge should have directed the magistrate to issue the necessary instructions to the government pleader to carry on the prosecution. N. A. R. vol. 5, page 172.

By the Mahomedan law ibra absolves from punishment.

1065. In the case of a prisoner cutting off his wife's hand, the law officers of the nizamut adawlut convicted him of the offence charged, but declared him unconditionally released from every penalty, in consequence of the injured party withdrawing her claim. Under the peculiar circumstances of the case, the prisoner was admonished and released without punishment.(a) N. A. R. vol. 1, page 344.

SECTION XXXIII.

OF COSTS AND DAMAGES.

Damages cannot be adjudged;

1066. No pecuniary compensations nor sums as damages are to be adjudged to, or be recoverable by, individuals in any criminal prosecution. *Beng.* and *Ben.* Reg. XIV. 1797. sect. 3, cl. 1. *Ced. Prov.* Reg. VII. 1803. sect. 39, cl. 1.

but costs actually incurred may be awarded;

1067. But the criminal courts are not restricted from adjudging a reimbursement of costs, actually incurred, upon a prosecution before them, by either of the parties thereto, in particular instances, wherein they consider such reimbursement just and equitable. *Beng.* and *Ben.* Reg. XIV. 1797. sect. 8. *Ced. Prov.* Reg. VII. 1803. sect. 39, cl. 3.

in all cases.

1068. The above provisions apply to suits under Act IV. 1840, as well as to other cases.(b) Const. No. 505.

(a) A similar case is reported, in which a wife mutilated her husband, and the latter refused to appear against her; and when the government pleader conducted the prosecution, presented a razeenamah. On this case the court came to a conclusion that it was not within their competence to sentence the prisoner to punishment; and section 3, Reg. IV. 1822, was subsequently enacted in order to provide such power. See N. A. R. vol. 2, page 29.

(b) This was ruled in regard to Reg. XV. 1824; but appears equally applicable to Act IV. 1840.

Suits for damages must be preferred in the civil court.

1069. The criminal courts cannot award any compensation or damages beyond reimbursement of actual costs. The parties must be referred to a civil action. Const. No. 931.

But civil courts cannot award the costs of a criminal action. The magistrate may award such by a subsequent order.

1070. The civil courts are not competent to take cognizance of suits for costs incurred in a criminal court. But if a magistrate, from oversight, has omitted to order a reimbursement of costs to the party whom he thinks justly entitled thereto, he is at liberty to supply the omission by a subsequent order, upon application of the party for that purpose. Const. No. 367.

Costs may not be paid from the government treasury; but must be recovered as in a civil suit.

1071. In no case, wherein the government is not one of the parties, can reimbursement of the costs be made from the treasury of the court; they must be levied by the attachment and sale of the property of the party against whom they are awarded, in like manner as costs adjudged in civil suits. Const. Nos. 373 and 590.

CHAPTER IV.

OF PROCESSES.

SECTION I.

RULES OF GENERAL APPLICATION.

In heinous cases all processes are to be served by officers receiving pay from government.

1072. Whenever a summons, or other criminal process, is served by a burkundaz, chuprassy, or other public officer receiving wages from government (and such officers are to be employed in serving all criminal processes in cases of a heinous nature) no diet money, or other allowance or gratuity, is to be demanded or received from the complainant or the accused, whether the case be adjusted by razeenamah or otherwise; and the demand or receipt of such by any public officer, directly or indirectly, in violation of this rule, is punishable as a criminal offence on conviction before the magistrate, or sessions court. The offender is also compellable, either by a criminal prosecution, or a civil action, to refund the amount received, besides being liable to immediate dismission from office. Reg. IX. 1807. sect. 14, cl. 2. Reg. VII. 1811. sect. 4.

Penalty, if such officers demand or receive diet money.

In petty cases processes are to be served by peons, who are to receive only a fixed rate of tullubana under the same penalties.

1073. In cases of adultery, fornication, calumny, abusive language, slight trespass, or inconsiderable assault, the process is to be served by peons, or other persons not receiving wages from government, who are to be authorized by the magistrate to demand and receive tullubana at a fixed rate; and they are not to demand or receive more, upon any pretence whatever, under the penalties above stated with respect to public officers receiving wages from government. The tullubana is to be paid in the first instance by the party at whose instance the process is issued, subject to reimbursement from the accused,

if the charge is establised, under the discretion vested in the criminal courts by sect. 8, Reg. XIV. 1797. (*Ced. Prov.* cl. 3, sect. 39, Reg. VII. 1803).* Reg. IX. 1807. sect. 14, cl. 3. Reg. VII. 1811. sect. 4.

* *v. para.* 1067.

Peons so employed are to be registered.

1074. Magistrates are to cause the names of all persons employed in the execution of criminal processes, who do not receive a monthly salary from government, to be registered with the following particulars, viz., the names of their fathers, their age and places of abode, and a concise description of their persons. Reg. XXVI. 1814. sect. 14, cl. 2.

Nazirs are to employ no persons not registered.

1075. The nazirs are strictly prohibited, under pain of immediate dismission, from employing any person not registered in the mode above prescribed, and not being an officer on the public establishment, in the service of any process, or in the execution of any order or official act whatever, without a special authority from the magistrate, or other public officer competent to give such directions. Reg. XXVI. 1814. sect. 14, cl. 3.

Badge of office.

1076. It was directed that the peons, who might be registered as above required, should be furnished with an uniform belt, or such other badge of office, at the discretion of the judge, as should suffice to distinguish them from the chuprassies on the fixed establishments. The expense of such badge was to be defrayed out of the tullubana of the peon receiving the same. The judges and magistrates were required to frame a table for regulating the account of tullubana demandable on the service of process, according to the rates prescribed by the regulations, or established by usage.(a) The table was to contain a statement of the several police jurisdictions, or other more convenient local divisions, the computed distance of the centrical part of such local division from the sudder station, and the number of days for which tullubana is to be allowed on the serving of process within each local division, calculated on the computed distance of the centre of each local division from the sudder station. Reg. XXVI. 1814. sect. 14, cl. 4.

Table of tullubana according to the distance of each thana.

Such table to be suspended in the cutcherry, and all tullubana to be calculated accordingly.

1077. The table so framed is to be suspended for general information in the cutcherry of the magistrate; and no tullubana is to be allowed in any instance beyond the rates, or for a greater number of days, than is prescribed in such table, without a special written order from the magistrate, assistant, or other public officer competent to pass the same. Reg. XXVI. 1814. sect. 14, cl. 5.

Tullubana to be paid previously to the execution of process.

1078. The amount of tullubana, demandable according to such table, is to be specified on the back of each summons or other process, and the amount is to be paid by the person taking out the process to the nazir previously to the execution of such process: a receipt is to be endorsed on the process in each instance by the nazir, specifying the amount, and the person from whom it was received. Reg. XXVI. 1814. sect. 14, cl. 6.

If two or more processes are to be served by one peon.

1079. When two or more processes are to be served by one peon, the magistrate, or other officer who orders the same to be served, is to determine in what proportions the fixed rates of tullubana are to be paid by the parties respectively, and is to sign an order to that effect on the face or back of the process. Reg. XXVI. 1814. sect. 14, cl. 7.

(a) In clause 3, sect. 14, Reg. IX. 1807 (which is modified by sect. 14, Reg. XXVI. 1814) the rate specified is "two annas per diem, or three annas in districts where such higher rate is usual and necessary."

The peon is to be paid ¾ of the tullubana after execution of process.

1080. When the process has been executed and returned according to the preceding rules, the nazir is to pay to the peon three-fourths of the tullubana received by him on account of such process, and the nazir is entitled to appropriate the remaining one-fourth of the tullubana to his own use. Reg. XXVI. 1814. sect. 14, cl. 8.

But nazir may make advances to the peon at his discretion.

1081. The nazir is permitted to exercise his discretion in advancing to the peon, on his own responsibility, such portion of the tullubana as he considers necessary for the subsistence of the latter while engaged in serving the process on account of which it is paid; but the presiding officer is not competent to exercise any interference in the matter. Const. No. 1084.

Magistrate to prevent undue exactions.

1082. The magistrates and other officers are required to take every possible precaution, and to give all practicable attention for the purpose of preventing illegal or undue exactions of diet or subsistence money under the name or pretence of tullubana. Reg. XXVI. 1814. sect. 14, cl. 9.

General warrant illegal.

*1083. The issue of a general warrant [or other process against the person] is illegal. Const. No. 766.

In case of absence, or absconding, an engagement is to be taken from head person of village to produce him on his return, or to give information.

1084. Whenever any process is issued by a magistrate or police officer for the attendance of a prosecutor or witness, or for the apprehension of a defendant, and such person is absent or has absconded, the police officer entrusted with the process is to require the proprietor, manager, or head person of the village, in which the person summoned is said to reside, to furnish a written certificate of the individual's absence, engaging therein either to cause his attendance on his return to the village or to give information at the thana of his arrival. Reg. XX. 1817. sect. 24, cl. 5.

Penalty for failure in such engagement.

1085. If it is afterwards established, on inquiry before the magistrate, that the person summoned was actually in the village at the time of the execution of such certificate; or if it is proved that he returned to the village afterwards, and that the person executing the certificate wilfully neglected to give due intimation of his return to the officers of police; the person so offending is liable to be fined by the magistrate in any sum not exceeding 200 rupees, and in default of payment to be confined in the civil jail for any period not exceeding one month. Reg. XX. 1817. sect. 24, cl. 6.

Magistrates may attend in person the execution of their own process.

1086. Whenever a magistrate, or other public officer, authorized by the regulations in force to issue process of arrest, or other judicial process upon the person or property of individuals amenable to their respective jurisdictions, deems it necessary for any special reason to be personally present at the execution of such process; and to see that it is duly executed in the manner prescribed by the regulations; it is competent to the public officer, who has issued the process, to attend personally for the purpose above-mentioned; and to adopt or direct any legal measures that may be necessary for the execution thereof. Reg. I. 1825. sect. 2.

Power of releasing from arrest.

1087. The court which issued the process of arrest is alone competent to release the prisoner. Const. No. 1000.

1088. A person being in attendance on a criminal court on bail to answer a criminal charge is not liable to arrest under a civil process; nor is a person in attendance on a collector to defend a suit or claim pending before that officer. But the protection will last only as long as the party is in actual attendance, or coming to, or returning from the court.(a) Const. Nos. 885, 893, and 1089.

A person in attendance on one court is not liable to be arrested by another.

1089. The civil court is not competent to require from a magistrate delivery on civil process of the person of a prisoner after the expiration of his imprisonment in the criminal jail. Const. No. 1276.

Nor can a civil court require a magistrate to deliver up a person on the expiration of his sentence of imprisonment.

1090. Police officers of one zillah may not be arrested in another, while in the execution of their duty. Const. No. 851.

Nor can a police officer be arrested while in the execution of his duty.

SECTION II.

OF SUMMONS.

By magistrate.

How to be served in bailable offence.

1091. The summons issued by a magistrate* in the case of any bailable crime or misdemeanor, which does not appear to require the immediate apprehension of the accused, is to bear his official seal and signature and to be served through the foujdaree nazir by a single chuprasy or peon;—or† if the accused have an accredited agent at the place where the court is held, expressly empowered either by a clause in his general mokhtarnamah, or by a separate mokhtarnamah granted for that purpose, to receive on behalf of his constituent judicial processes, the summons may be tendered, if the magistrate deem it expedient, to such agent to be communicated by him to his principal; and the agent's acknowledgment endorsed thereon is to be accepted as a sufficient service of it, if he be desirous of giving such acknowledgment in preference to the summons being served on the person of his principal by an officer of the court;—or if the accused is employed in the salt department, according to the special rules provided for such case. Reg. IX. 1807. sect. 6, cl. 1.

* *v.* ¶ 239.

† *In the manner prescribed for service of civil process by cl. 2, sect. 2, Reg. II.* 1806.

What it is to contain; and form.

1092. The summons in all such instances is to specify the offence with which the accused is charged, and is to contain, according to the circumstances of the case, a requisition to attend either in person or by vakeel to answer the charge on or before a certain day to be stated in the summons according to the form No. 5 of Appendix A. Reg. IX. 1807. sect. 6, cl. 2.

Form to be used when bail is required.

1093. If it is deemed necessary to require bail, the extent of the bail is to be specified in the summons according to form No. 6 of Appendix A. Reg. IX. 1807. sect. 6, cl. 3.

(a) On a reference being made to the Advocate General regarding this point, he replied, that according to English law no man attending a court of justice as party or witness in any cause of any sort could be arrested on process in a civil suit, the protection being *eundo, morando,* and *redeundo,* and a reasonable construction being given as to what is going, staying, and returning. It would seem therefore that a plaintiff is equally with the defendant exempt from an arrest under such circumstances; and it is doubtless as reasonable in the one case as the other.

Warrant when the summons is neglected.

* v. ¶ 240.

1094. The warrant issued by the magistrate, when an accused person, on whom a summons has been served, has not attended according to the exigence thereof,* is to bear his official seal and signature [and to be drawn out according to form No. 1 of Appendix A]. Reg. IX. 1807. sect. 7.

Warrant may be issued upon failure to serve summons.

1095. In the Company's territories, except the local jurisdiction of the supreme court, whenever in any criminal case a summons to the defendant is by law the first process, it is lawful for any court which has issued a summons in such case to issue a warrant for the apprehension of the defendant in such case, upon proof that due diligence has been used to serve such summons upon the defendant, and that the officer or other person whose duty it is to serve such summons upon the defendant has been unable to serve such summons; any law or regulation to the contrary notwithstanding.† Act X. 1845.

† *For form see appendix A. No.29.*

How the officer serving the summons is to proceed in cases, in which bail is not required.

Magistrate may instruct him to receive razeenamah.

1096. In cases, in which bail is not required, the officer entrusted with the summons is to demand only an acknowledgment of the receipt of it; and in the absence of the party the summons may be served on the principal person in his house or family, if such person be willing to receive the same, and to return an acknowledgment for the party. The officer serving the summons, in such instances, as well as in all cases wherein the magistrate may deem it proper to admit the private adjustment of the parties, is to be further instructed on the tender of a razeenamah, expressing the plaintiff's desire to withdraw his complaint, and the defendant's acquiescence in the complaint being withdrawn, to receive such razeenamah as a sufficient return to the process. Reg. IX. 1807. sect. 8.

By police officer.

To be served by a single burkundaz, and not by the party complaining.

* v. ¶ 250.

1097. The summons issued by a police officer in the case of a bailable offence, not requiring the immediate apprehension of the accused,* is to bear his official seal and signature, and to be served through a single burkundaz, or through any known and accredited agent of the party complained against, who may be upon the spot, and willing to receive the same in behalf of his principal; but no summons is to be delivered to a complainant to serve on the person accused. Reg. XX. 1817. sect. 24, cl. 1.

When bail is not required, acknowledgment of receipt of process is sufficient.

1098. In cases wherein bail is not required, police officers entrusted with the service of summonses are to demand only an acknowledgment of the receipt of the process; and, in the absence of the party, the summons may be served on the principal person in his house or family, if such person be willing to receive the same, and to return an acknowledgment for the party whose attendance is required. Reg. XX. 1817. sect. 24, cl. 2.

Forms of summons when bail is not, and when it is required.

1099. The summons to be issued by police officers, under the rules contained in the preceding clauses, is to be made out in the form No. 10 of Appendix A; but if the charge is of a serious nature, and such as appears to require bail to secure the appearance of the party accused, either in person or by vakeel, before the magistrate, the summons is to be drawn up according to the form No. 11 of Appendix A, and is to specify the bail to be given. Reg. XX. 1817. sect. 24, cl. 3.

Form of warrant in cases of persons neglecting summons.

* v. ¶ 252.

1100. The warrant issued by a police officer for the apprehension of an accused person, who does not obey the requisitions of the summons,* is to be under his official seal and signature, and to be drawn out according to the form No. 12 of Appendix A. Reg. XX. 1817. sect. 24, cl. 4.

SECTION III.

OF WARRANTS.

By magistrate.

In a case not bailable.

* v. ¶ 231.

1101. The warrant to be issued by a magistrate, in the case of an offence not bailable or in which the admission of bail would be unsafe and improper,* is to bear his official seal and signature, and to specify the crime charged, and to direct the officer entrusted with the execution of it to apprehend the person accused. It is to be in the form No. 1 of appendix A, and to be directed to the nazir of the criminal court. Reg. IX. 1807. sect. 3, cl. 1 and 2.

In a bailable case.

1102. If the magistrate in any bailable case deems it proper to authorize the officer, to whom the warrant is committed, to receive bail for appearance (with or without security for keeping the peace), it is to be so specified in the warrant, with the extent of the bail (and security) required, in the form No. 2 of appendix A. Reg. IX. 1807. sect. 3, cl. 3.

Bail-bond, and security for keeping the peace.

1103. The bail to be taken for appearance before the magistrate is to be in the form No. 3 of appendix A, and when security is required for keeping the peace, it is to be taken in the form No. 4 of appendix A. Reg. IX. 1807. sect. 3, cl. 4 and 5.

The above rules to be strictly conformed to; and general warrants prohibited.

1104. The magisterial authorities are required to conform strictly to the above rules, and to be careful that no warrants are issued for the apprehension of persons not expressly named therein. The session courts are to notice any instances in which this rule is inadvertently violated. C. O. No. 141 of vol. 3.

By police officer.

In serious cases warrant how to be issued;

* v. ¶ 253.

and how to be served.

1105. The warrant issued by a darogah or other police officer, in cases requiring the immediate apprehension of the offender,* is to bear his seal and signature, and to be drawn out in form No. 12 of appendix A. Reg. XX. 1817. sect. 25, cl. 1.

1106. Warrants issued by the police darogah are to be served by the jemadar and burkundazes of the thana, and the mode of execution is to be certified on the back of the process, which is to be filed and sent in to the magistrate, together with the report and challan which accompanies the prisoners. Reg. XX. 1817. sec. 25, cl. 2.

Darogah to require the assistance of landholders, when necessary.

1107. In issuing processes of arrest in cases in which the darogah apprehends resistance, or on any occasions where the assistance of the landholders, or farmers, or local agents, is necessary for the due execution of the process, he is specifically to require in writing, on the face of the dustuck, or warrant, the proper landholder, or farmer, or local agent to back the process and to afford the necessary aid. Reg. XX. 1817. sect. 25, cl. 3.

Offenders, taken in the act, to be apprehended without written warrant.

1108. Darogahs, mohurrirs, or jemadars of police are competent to apprehend, without a written charge or warrant, persons who are found in the act of committing a breach of the peace, or against whom a general hue and cry is raised immediately after the commission of the criminal offence, or who are detected with stolen goods in their possession; but on such occasions it is incumbent on the officer, by whom the arrest is made, to record his reasons for seizing the offending party, and to forward such person forthwith together with a report of the circumstances of the case, to the magistrate. Reg. XX. 1817. sect. 25, cl. 4.

Dwelling houses are not to be forcibly entered, except in cases of necessity.

1109. Officers of police are not without necessity to break open the door of a dwelling house, or any place of habitation, for the purpose of executing a warrant or other process of arrest. But if certain information is received that a person, charged with murder, robbery, or other heinous offence, or violent breach of the peace, and against whom a warrant or other process of arrest has in consequence been issued, is concealed within a house or other building, and such person does not deliver himself up on the requisition of the officer bearing a written warrant and the written process to apprehend him; the latter may, in the presence of two or more creditable inhabitants of the place, break open the outer door of the house or other building, and also the door of any interior apartment not being a zenanah or female apartment in the actual occupancy of women, by the usage of the country considered private, for the purpose of executing the warrant, or other process of arrest entrusted to him. Reg. XX. 1817. sect. 25, cl. 5.

Zenanahs are not to be entered except upon credible information that offenders are there concealed; and the women are to be previously allowed to withdraw.

1110. In such cases, if information is received that the accused has concealed himself in a zenanah or female apartment, in the actual occupancy of women, the officer, employed to execute the warrant, is to surround the house or take such other precautions as are requisite to prevent his escape; and is to endeavour to ascertain by the means of two creditable women, unconnected with the family or with each other, whether the accused is really concealed in the zenanah; in which case and if such person does not on a further requisition deliver himself up, the police officer is competent, in the presence of two or more creditable residents on the spot, to break open the female apartment, and execute the process entrusted to him, giving notice at the same time to any women in the zenanah that they may withdraw. Reg. XX. 1817. sect. 25, cl. 6.

The same powers are vested in officers entrusted with the execution of process of arrest by a magistrate.

1111. The powers vested in officers of police by the above provisions, or by any other regulation in force, for the service and execution of warrants, or other process of arrest, in serious criminal cases, under the seal and signature of a police officer, are equally applicable to all officers intrusted with the execution of a warrant, or other process of arrest, in criminal cases, bearing the seal and signature of a magistrate, joint-magistrate, or any public officer empowered to act as magistrate, whether the person to whom it is addressed is an officer of the police, or otherwise. Reg. I. 1825. sect. 3, cl. 1.

Police officers subject to punishment for abuse of power.

1112. Any wilful abuse and perversion of the powers hereby vested in police officers for the ends of public justice, will subject them, on conviction before the magistrate or sessions court, to exemplary punishment according to the circumstances of the case, besides immediate dismission from office. Reg. XX. 1817. sect. 25, cl. 7.

Persons entrusted with the execution of a process of arrest by a magistrate are liable to the same punishment for abuse of power.

1113. The above provision is applicable to all persons, whether police officers or others, who are employed to execute a warrant, or other process of arrest, issued by a magistrate, joint-magistrate, or other public officer empowered to act as magistrate; and who is guilty of any wilful abuse or perversion of the powers vested in them by this regulation. Reg. I. 1825. sect. 3, cl. 2.

Magistrates to be careful that the police officers do not make unnecessary arrests.

1114. The magistrates must require from police officers the greatest caution in the exercise of their authority to apprehend persons on suspicion of crime. His attention should be especially turned to this point, when the disproportion of convictions to acquittals is great; and he should point out to the police officers all instances where they should not have sent the suspected persons to the sudder station, but should have admitted them to bail (if necessary), and have awaited his instructions. C. O. No. 17 of vol. 2.

SECTION IV.

EXECUTION OF PROCESS IN THE SALT AND OPIUM DEPARTMENTS.

Police.
Process how to be served on persons so employed in bailable cases, and security how to be given.

1115. In all bailable cases, where it is necessary, under the provisions of this regulation, to summon or apprehend any officer or person employed in the salt or opium departments, the police darogah is to transmit the summons or warrant, under a sealed cover, addressed to the salt or opium agent, or the head native officer of the aurung, kothee, or chokee, who is either to give, or to direct sufficient security to be given, for the due attendance of the party, certifying on the back of the process the manner in which it has been served, and by whom the security has been given, or causing the defendant to accompany the officer, bearing the darogah's process, to the thana. Reg. XX. 1817. sect 29, cl. 1.

In such cases the accused is not to be forced to appear till after the manufacturing season, except in particular cases.

1116. In cases of a bailable nature, in which a person under engagements, and employed in the salt or opium departments, is summoned under the above provisions during the manufacturing season, the police darogah with the view of preventing unnecessary interruption to the manufacturer, is to require the party summoned to appear in person or by vakeel, either during or after the manufacturing season, as the circumstances of the case may dictate, subject to the future orders of the magistrate, to whom the darogah is in each instance to report the reasons which have influenced him in the exercise of the discretion here vested in him. Reg. XX. 1817. sect. 29, cl. 2.

Rule for serving summonses on such persons to attend as witnesses, and for taking recognizance.

1117. Summonses to any officers or persons, employed in the salt or opium departments, to attend as witnesses are to be served in the manner directed by the above provisions; but the salt or opium agent, or the head native officer of the aurung, kothee, or chokee, instead of requiring the person summoned to give security, or proceed to the thana, is to take from the witness a recognizance, agreeable to the form No. 17 of appendix A, and is to deliver the same to the officer serving the process. Reg. XX. 1817. sect. 29, cl. 3.

Warrants for offences not bailable are to be served upon such persons as upon others; but notice is to be given to the agent.

1118. If a charge is preferred to a police darogah against any officer or person, employed in the salt or opium departments, for an offence that is not bailable, and there appears to him sufficient ground under the provisions of this regulation, for apprehending the person so charged, the warrant for his apprehension is to require him to attend immediately in person, and is to be executed in the same manner as upon persons not so employed. But the darogah, after securing the offender, is to give notice of his apprehension to the salt or opium agent, or to the head officer of the nearest aurung, kothee, or chokee, as the case may be. Reg. XX. 1817. sect. 29, cl. 4.

Magistrate.
Process how to be issued to a salt agent or his assistant.

1119. When any process or order is issued by a magistrate to a salt agent, or his assistant, he is to forward it under a sealed cover addressed to the agent, or his assistant, and superscribed with his official attestation. The agent, or his assistant, is immediately

to acknowledge the receipt of the order, or process, by an endorsement to that effect on the back of it, and is to return it under a sealed cover addressed to the magistrate. Reg. X. 1819. sect. 15.

Rules for serving process against persons concerned in the provision of salt under a salt agent when charged with a bailable offence.

The warrant how to be sent and what to contain.

1120. In cases in which a person under engagements on account of the salt manufacture, and employed therein, is charged before the magistrate with a bailable offence, and the warrant is ordered to be served at any period between the commencement of the month of Kautic and the end of Assaar;—the warrant is to be enclosed in a sealed cover addressed to the agent, and superscribed with the official signature of the magistrate; and is to require the party summoned to appear in person, or by vakeel, as the magistrate thinks proper, either during or after the manufacturing season; and to specify the sum for which the security or recognizance for the appearance of the defendant is to be given, the amount of which is to be regulated by the magistrate, according to the nature of the offence, and the situation and circumstances in life of the defendant.

The agent may himself or by another person execute the security required;

his guarantee of the security being sufficient;

or he may cause the accused to be conveyed to the court.

He is to appoint persons at the sudder station to execute securities; and the magistrate may send the process to such persons.

It is at the option of the agent to execute, or to cause one of his officers, or any other person, whom he thinks proper, to execute the security required from the accused, in cases in which such security is considered necessary, or to leave the party summoned to find the required security; and in the latter case if the officer bearing the summons or warrant entertains doubts of the responsibility of the surety so offered, and the agent declares such surety to be responsible, the officer is to accept the security. If the agent does not deem it expedient to order any of his officers or any other person to become security, and the defendant himself is not able to find such security, as the agent deems responsible, the agent is to cause the party summoned to accompany the officer to the court, or, if the summons has not been committed to the charge of an officer, he is to cause him to be conveyed before the court. The agents are to appoint such persons, as they think proper to station at the place, at which the court is held, to execute such securities: and the magistrate is authorized in instances in which he deems it proper, either from the distance of the place of abode of the agent from the place at which the person to be summoned resides, or other circumstances, to order the summons or warrant to be enclosed to one of the persons so empowered to become security, instead of transmitting it to the agent himself,—in which case such person is to proceed in the manner prescribed to the agent, where the summons is sent immediately to him.

If the process is served in the ordinary form on persons employed in the salt manufacture, from ignorance on the part of the court of his being so employed,—the officer how to proceed.

If the prosecutor does not specify that the person complained against is employed in the salt department, and the summons or warrant in consequence is ordered to be served on him in the same manner as on other persons during the months of Kautic and Assaar, the officer serving the summons or warrant, on the circumstance being notified to him by the agent or any of his officers, or by the defendant himself, is to deliver it to the nearest person empowered to execute securities, who is to proceed as above: but if the circumstance is notified to him by the defendant only, and he entertains doubts of his being so employed; or if without such doubts he apprehends that the defendant will abscond while he is repairing with the process to the person empowered to execute the securities; he is in such case to carry the defendant with the process to the person so empowered, and is not to release his person until the required security has been executed. Reg. X. 1819. sect. 21, cl. 4.

1121. The agent or other officer, through whom the summons or warrant is served, is to note on the back of it in what manner it has been served, and by whom the security has been executed. Reg. X. 1819. sect. 21, cl. 5.

Agent to endorse the process.

1122. If a charge is preferred to a magistrate against any of the officers of the agents, or any person under engagements on account of the salt manufacture and employed therein, for an offence that is not bailable, and there appears to the magistrate sufficient ground for apprehending the person so charged, the warrant for his apprehension is to require him to appear immediately in person, and is to be executed at all times in the same manner as upon persons, not so engaged or employed. But the officer, after securing the offender is to give notice thereof to the agent, or head officer of the nearest aurung, or place of manufacture. Reg. X. 1819. sect. 21, cl. 6.

Manner of arresting such persons on criminal charges not bailable.

1123. In all cases in which the agents, or their head officers empowered for that purpose, become surety under any of the above rules for the appearance of any officer or person employed in the salt manufacture, or declare any party whom the person summoned offers as surety to be responsible, the agent is to be considered personally answerable for the due performance of the conditions of the security, in the event of the party for whom the security has been given not performing them himself; or, where the party himself has given the security, and it has been declared responsible by the agent or his officers, in the event of the party, or such surety, not performing them. Reg. X. 1819. sect. 21, cl. 7.

The agent to be held personally responsible for the performance of the condition of security for appearance, which is given by himself or officers.

1124. Notices to officers or other persons employed in the salt manufacture to appear as witnesses are to be served during the manufacturing season in the same manner as if they were parties in the cause; but such officers or persons are not to be summoned except when their attendance is necessary; and on their appearance they are to be examined and dismissed with all practicable despatch, so that they may be absent from the business of the manufacture as short a time as possible. Reg. X. 1819. sect. 21, cl. 8.

Notices to such persons to appear as witnesses.

1125. The agents, their assistants, uncovenanted European and native officers, are liable to be sued in the dewanny adawlut, should they apply any of the above rules regarding notices, summonses, and warrants issued against persons employed in the manufacture of salt, to persons not bona-fide so employed; and as those rules are intended only to prevent unnecessary interruptions to the manufacture, where it can be avoided without impeding the course of justice, magistrates are empowered in particular cases, in which it appears to them indispensably necessary for the purposes of justice, to order the personal attendance of any native officer or person in anywise concerned or employed in the salt manufacture, whether he is a party or witness in the prosecution, at any time during the manufacturing season, notwithstanding anything to the contrary in the above rules, and to cause process to be executed upon him for that purpose, in the same manner as upon other individuals; but in such cases the magistrates are to record on their proceedings their reasons for deviating from the above provisions, which are to be considered as the general rules for issuing and executing such notices, summonses, and warrants; and in the notice, summons, or warrant, they are to specify that it has been specially ordered to be so executed in virtue of the discretionary power vested in them by this clause; and they are moreover strictly enjoined to refrain from every unnecessary exercise of that power. Reg. X. 1819. sect. 21, cl. 9.

Salt agents and officers may be sued for improper application of the above rules.

The observance of these rules may be dispensed with on special occasions:

but reasons for the deviation to be recorded.

The above provisions are applicable to certain officers employed in the provision of opium.

1126. The provisions contained in section 10, Reg. XXXI. 1793, [which regard persons employed in the provision of the Company's investment, and which are the same as those above quoted in regard to persons employed in the provision of salt] are extended to the undermentioned officers employed under the agents for the provision of opium :

The Dewan,	Gomashtahs of Kotees,
Naib Dewan,	Cash keepers ditto,
Cash keepers,	Mohurrirs ditto,
Mohurrirs,	Purkeas,
Nagree Writers,	Dandidars.
Godown keepers,	

Reg. XIII. 1816. sect. 26.

Magistrate to be kept informed of the names and stations of such officers.

1127. A copy of the register of the names and stations of the officers enumerated above in the native languages is to be transmitted, once in every year, to the magistrate ; it is also the duty of the agent to keep the magistrate informed of any intermediate change. Reg. XIII. 1816. sect. 27.

Superintendents of chokees to keep the magistrates informed of the situation of the chokees and of the officers attached to them.

1128. Superintending officers of the salt chokees are to be careful to keep the magistrates, in whose jurisdictions the chokees are stationed, furnished with lists of the chokees, pointing out their situations and specifying the names of the officers attached to them; and in the event of any change taking place in the situation of a chokee, or among the officers belonging to it, the same is to be immediately notified. Reg. X. 1819. sect. 23.

Process how to be served on officers of chokees charged with bailable offences.

1129. In cases in which an officer of a salt chokee is charged before a magistrate with a bailable offence, the warrant is to be enclosed in a sealed cover to the superintendent of the chokee, to which the party is attached, who is to cause the officer summoned to give the requisite bail, or immediately to appear in person, or by vakeel, as the magistrate thinks proper to require in the warrant. Reg. X. 1819. sect. 25.

When charged with offences not bailable.

1130. If a charge is preferred to a magistrate on oath against any of the officers of the chokees for an offence that is not bailable under the regulations, and there appears to the magistrate sufficient ground for apprehending the persons so charged, the warrant for their apprehension is to be executed at all times in the same manner as upon persons not chokee officers. But the officer of the court, after securing the offender, is to give notice thereof to the superintendent of the chokee to which the offender is attached. Reg. X. 1819. sect. 26.

When summoned as witnesses.

1131. A requisition to an officer of a salt chokee to appear as a witness is to be enclosed in a sealed cover to the superintendent of the chokee, to which such officer is attached, who is to cause the notice to be served in the regular manner; but such officers are not to be summoned excepting when their attendance is necessary, and on their appearance they are to be examined and dismissed with all practicable despatch, so that they may be absent from their chokees as short a time as possible. Reg. X. 1819. sect. 27.

Discretion vested in the courts to deviate from these rules.

1132. The discretionary power, granted by cl. 9, sect. 21 of this regulation (see ¶ 1125) to magistrates in special cases of persons concerned in the provision of salt under a salt agent, is equally vested in those authorities in regard to persons employed in the chokee department. Reg. X. 1819. sect. 28.

SECTION V.

OF BAIL.

Police.

In what cases bail is not to be taken.

In all other cases it may not be refused.

1133. Persons charged with murder, robbery, housebreaking, theft, arson, counterfeiting the coin, maiming or serious wounding, where the life of the person wounded is in danger, are not to be admitted to bail, if reasonable grounds appear for believing that such persons have been guilty of the crime imputed to them; but in all other cases, if sufficient bail is tendered for appearance before the magistrate, the police officer is to accept such bail, and immediately to release the party apprehended. Reg. XX. 1817. sect. 25, cl. 8.

Bail is in no case to be excessive.

1134. The amount of bail to be required by police officers is in no case to exceed what may be sufficient to prevent the parties absconding before the case comes before the magistrate, who is then to issue such further process or order as he judges proper. Reg. XX. 1817. sec. 24, cl. 3.

Form of bail bond.

1135. The bail to be taken by police officers for appearance before the magistrate is to be in the form No. 13 of appendix A. Reg. XX. 1817. sect. 25, cl. 9.

Magistrate.

Magistrate is not to omit to offer release on bail in bailable cases, and to record the offer; and the amount is not to be excessive.

1136. In all complaints preferred for offences clearly bailable, and in which there is no ground for refusing bail, if offered, the magistrate is to lose no time in apprizing the accused that security will be received for his appearance, stating at the same time the amount required; and he is further to record the offer and the terms of it, taking care that the amount demanded is not excessive, or in any way disproportionate to the nature of the offence, or the circumstances in life of the accused. C. O. No. 272 of vol. 1.

The amount should be limited to such sum as it would be equitable to recover; and care to be taken that the sureties are good.

1137. The magistrates should limit their requisitions of security for appearance to such sums as it may appear equitable to recover if the conditions of the engagement are not performed; and they should be careful to ascertain, that the sureties accepted are sufficiently responsible to make good the amount eventually demandable from them. C. O. No. 70 of vol. 1.

Persons not to be confined in nazir's house.

1138. Persons required to find bail are not to be kept in the nazir's house until security be furnished. C. O. No. 47 of vol. 2.

Crimes which are not bailable.

1139. Persons accused of murder, robbery, housebreaking, theft, or counterfeiting the coin, provided there appear sufficient grounds for committing them for trial,(a) are not to be admitted to bail. *Beng.* Reg. IX. 1793. sect. 7. *Ced. Prov.* Reg. VI. 1803. sect. 7.

(a) In English law, bail is admissible in all cases below felony, unless it is prohibited by some special act of parliament; and to refuse or delay to bail any person bailable, is an offence against the liberty of the subject in any magistrate by the common law as well as by the statute. By statute 7 Geo. IV. cap. 64 it is provided that if a charge of felony is supported by positive and credible evidence of the fact, or by evidence which, if not explained or contradicted, raises a strong presumption, in the opinion of the justices, of the guilt of the party charged, he is to be committed for trial; but if the evidence in support of the charge is not in their opinion such as to raise a strong presumption of guilt, or if evidence is adduced on behalf of the prisoner which weakens the presumption of guilt, but if nevertheless there appears sufficient ground for a judicial enquiry, the prisoner may be admitted to bail. *Blackstone's Commentaries, book 4, chap. 22; and note by Christian.*

Case of arson.

1140. In Benares and the ceded provinces the offence of setting fire to any house, village, or town, is also declared not bailable; but there is no express enactment to that effect in regard to the lower provinces. It would, however, seem to be implied in sect. 3, Reg. IX. 1807.* *Ced. Prov.* Reg. VI. 1803. sect. 7. Reg. III. 1804. sect. 7. *Ben.* Reg. XVI. 1795. sect. 4, cl. 2.

* *v.* ¶ 231.

Examples.

1141. The offence of "knowingly receiving stolen property" is a bailable offence, provided the original theft of such property does not form part of the charge. So also is the offence of embezzlement. Consequently a person apprehended on such charges, should be allowed the option of giving bail. Const. Nos. 1237 and 1238.

Explanation of the above rules as regards homicide.

If the charge is for culpable homicide not amounting to murder, the accused is to be admitted to bail.

1142. No species of homicide, except murder, is included in the provisions, which forbid the admission to bail of persons accused of murder. If the charge is for manslaughter, or any species of illegal homicide, not involving the crime of murder, the magistrate is authorized to proceed in the first instance, either by warrant for taking into custody, or by summons requiring bail, as he judges proper, on consideration of the circumstances of the case, and of the condition and character of the party accused. After the enquiry directed by sect. 5, Reg. IX. 1793 (*Ced. Prov.* sect. 5, Reg. VI. 1803)*, if the magistrate is of opinion that the evidence does not establish the crime of murder, but that there is sufficient ground for bringing the accused to trial before the sessions on a charge of manslaughter, or other culpable homicide, the party is to be held to bail for appearance before the sessions court; but the magistrate is authorized to release the accused, if the homicide, in which he appears to have been concerned, is clearly shown to have been accidental or justifiable under the Mahomedan law and the regulations. Reg. IX. 1807. sect. 9, cl. 1.

* *v.* ¶ 258.

If the homicide was accidental or justifiable, the accused is to be released.

The principle of the above rule is applicable to persons privy to or incidentally accessary to heinous crimes.

Bail may be admitted in all cases not declared unbailable.

The session judge may admit to bail in cases declared not bailable;

and may direct the magistrate to reduce the amount of bail required by him.

1143. The principle of the preceding clause is applicable to persons appearing, from the magistrate's inquiry, to have been only privy or incidentally accessary to crimes of a heinous nature, without being concerned therein as principals, or as aiding and abetting, procuring or instigating the perpetration thereof; and in all cases, whether of trial before the magistrate or before the sessions, if the admission of bail has not been prohibited by the regulations, and the bail tendered appears sufficient for securing the appearance of the accused, he is to be admitted to bail, until sentence is passed upon the charge against him. Moreover, in special instances, wherein the session judge, on a report from the magistrate, or on other satisfactory information before him, deems it just and proper to admit to bail a person charged with an offence not bailable under the general provisions contained in the regulations, he is competent to instruct the magistrate to accept sufficient bail, instead of keeping the accused in confinement whilst the charge against him is under trial. The judge may likewise, in all bailable cases, wherein the bail required by the magistrate appears excessive, direct the magistrate to receive such bail as may be deemed sufficient to answer the purpose intended by it. Reg. IX. 1807. sect. 9, cl. 2.

So, in cases committed to the sessions, the judge may always admit to bail.

1144. In cases committed for trial to the sessions, the session judge may exercise the power vested in him by the above provisions by instructing the magistrate to admit to bail any persons whom he has committed to close confinement, until they can be brought to trial at the sessions, if the offence charged appears to be of a bailable nature; or, though not within the description of offences declared bailable by the regulation, if the judge is of

opinion that there is special reason for admitting the prisoner to bail, and sufficient bail is tendered by him, to stand his trial at the sessions. Reg. VI. 1818. sect. 3, cl. 3.

In what cases the judge may admit to bail prisoners whose trials are referrible to the nizamut adawlut.

Rule to be observed when the prisoner cannot find bail.

1145. The session judge is further competent to hold to bail, or to direct the magistrate to admit to bail, any prisoner, whose trial is referrible to the nizamut adawlut, in consequence of the judge not concurring in the futwa of the law officer for the conviction of the prisoner. When the prisoner is unable to find bail, the judge should, with the least possible delay, transmit the proceedings, with a letter stating the grounds on which he does not concur in the futwa to the nizamut adawlut; and the law officers of that court are to deliver their futwa, as soon as possible after the receipt of the trial, for the early sentence or order of the court. Reg. XIV. 1810. sect. 7.

Superintendent of police cannot interfere in regard to the bail in such cases.

1146. At the termination of a trial by a session judge, the commissioner of circuit is not competent, under any circumstances, to direct that the prisoner shall be held to bail pending the reference to the nizamut adawlut. N. A. R. vol. 4, page 332.

Persons on bail in such cases not being apprehended for some time.

1147. When a prisoner on bail has not been apprehended until some time after the date of his sentence by the nizamut adawlut, a special report should be made to that court, through the session judge, for their orders as to the date from which the sentence should commence. N. A. R. vol. 3, page 49.

The judge when calling for explanation, may direct admission of bail, although he has not examined the proceedings.

1148. The session judge is at all times competent to require the magistrate to suspend execution of his order, and to direct the release of a prisoner on bail, until he shall have passed his final order, when justice appears to require that measure, whether he has or has not examined the proceedings on which the order is founded. Const. Nos. 489 and 657.

The grounds of detention of prisoners charged with bailable offences to be noted in statement No. 1.

1149. Whenever any persons charged with bailable offences are detained under examination in custody, the grounds of their detention are to be stated under the head of remarks in the magistrate's statement No. 1; and the judge should return to the magistrate any statement in which the required information is not given. C. O. No. 49 of vol. 3; and No. 98 of vol. 3, para. 32 of magistrate's rules.

The judge should generally admit to bail through the magistrate.

1150. The session judge should generally direct the magistrate to admit to bail persons accused of criminal offences while under trial; but cases may arise, though rarely, which would warrant the judge in accepting bail himself in the first instance. Such cases, however, cannot be provided for by any general directions, and must depend on their own peculiar circumstances. Const. No. 111.

The bail-bond remains in force until final sentence has been passed.

1151. The bail bond of persons committed to the sessions is in full force until the trial is concluded, which is not until final sentence is passed; and no person on bail should be committed to jail until a final sentence involving imprisonment has been passed upon him. Const. No. 605.

A particular day should be appointed for the attendance in court of persons on bail.

1152. Magistrates are not to require respectable persons, held to bail on charges of a trivial nature, to remain for a length of time in constant attendance at the sudder station. A particular day should be appointed for the attendance in court of persons on bail, whenever a longer period than one week is likely to elapse between the proceedings. C. O. No. 287 of vol. 1.

Forfeiture.

Magistrate how to proceed when persons held to bail do not attend the sessions.

1153. Whenever a person held to bail for his appearance before the sessions, neglects to attend at the appointed time, the magistrate is to call upon his sureties to produce him, and on their failure is to report the case, with any reasons assigned by them for the non-fulfilment of their engagement, to the session judge; who is to determine, and instruct the magistrate, whether the penalty of the security bond is to be immediately enforced, or whether further time is to be allowed to the sureties to produce the person for whom they are responsible. Reg. VI. 1818. sect. 4. cl. 1.

Recovery of penalty in such cases.

1154. When the judge, on consideration of the magistrate's report, directs the enforcement of the security bond, the magistrate is to proceed to recover the amount of the penalty from the sureties by the attachment and sale of any property belonging to them, in the mode prescribed for the attachment and sale of property in satisfaction of decrees of the civil courts; or if the amount demandable is not paid, and cannot be realized from any property belonging to the sureties, they are liable to confinement, by order of the magistrate, in the civil jail for a period not exceeding six months. Reg. VI. 1818. sect. 4, cl. 2.

In such case magistrate cannot enforce the penalty without the permission of judge.

1155. The surety of a person held to bail for trial before the sessions failing to produce him, the bail becomes forfeited; but the magistrate should not enforce the penalty, until he has procured the permission of the session judge. Const. No. 290.

Rules for the enforcement of a bail-bond executed before a magistrate engaging to produce in his court a party charged with a criminal offence.

1156. Whenever a person, who has executed before a magistrate a security bond engaging to produce in his court a party charged with a criminal offence, fails to produce him, he is to be called upon to show cause why the penalty, to which he is liable by his engagement, should not be enforced; and unless satisfactory reason is assigned against enforcing the bond in whole or in part, it should be put in execution according to the same rules and by the same process observed by the civil courts in enforcing payment of money adjudged to be due by a decree. If the surety is dead, the magistrate is to proceed against his heirs and executors to the extent of any property belonging to the deceased, which has come to their hands. On this account the bail bond should always specify the responsibility to which the heirs and executors of the surety will be liable in the event of his demise. A surety, or in the event of his demise his representative, may at all times obtain a discharge from further responsibility by delivering up the person for whom he is responsible; and magistrates should always attend to any application made to them for that purpose, at the same time requiring the persons so delivered up to find other and sufficient security. In carrying these rules into effect, when the magistrate has not received any special orders from the session judge or nizamut adawlut, he may exercise his discretion in not enforcing the penalty, either wholly or partially, when the circumstances of the case appear to call for indulgence, or any equitable reason exists for dispensing with the penalty. Const. No. 1233.

Forms.

What the bail-bond is to contain.

1157. All bail bonds for prisoners released upon bail are to be for a specific sum, the amount of which is to be determined by the magistrate, upon a due consideration of the case and the circumstances and situation in life of the parties, and are to contain a clause declaring the amount forfeited to government in the event of the condition of it not being performed. *Beng.* Reg. IX. 1793. sect. 5. *Ced. Prov.* Reg. VI. 1803. sect. 5.

1158. The bail, to be taken in all cases of persons being held to bail for trial before the sessions courts, is to be in the form No. 7 of appendix A. Reg. IX. 1807. sect. 10.

Form of bail-bond for trial before the sessions court;

1159. The bail to be taken for appearance before the magistrate is to be in the form No. 3 of appendix A. Reg. IX. 1807. sect. 3, cl. 4.

and before the magistrate.

Recognizances.

To be taken by magistrate from prosecutor and witnesses to ensure their attendance at the sessions.

1160. In cases committed to the sessions, the magistrate is to bind over the complainant to appear and carry on the prosecution, and the witnesses to attend and give their evidence: the recognizances to be taken from such persons, as well as all bail bonds for prisoners released upon bail, are to be for a specific sum, the amount of which is to be determined by the magistrate, upon a due consideration of the case, and the circumstances and situation in life of the parties, and are to contain a clause declaring the amount forfeited to government, in the event of the condition of it not being performed. *Beng.* Reg. IX. 1793. sect. 5. *Ced. Prov.* Reg. VI. 1803. sect. 5.

Recognizances to be taken by police officers from such persons to appear before magistrate.

1161. Prosecutors and witnesses, whose attendance is necessary at the criminal courts, are to execute recognizances (mochulkas), according to the forms Nos. 16 and 17 of appendix A respectively, before the police officers, to appear before the magistrate on a specific day; which is to be the day, whereon the accused is bound to appear if he has been admitted to bail, or on which he is expected to arrive at the magistrate's place of residence if he is to be forwarded thither under custody: the police officer, in whose presence the recognizance is executed, is to forward it with his report to the magistrate, and is to deliver to the prosecutor or witness a despatch addressed to the magistrate and drawn up after the form No. 17½ of appendix A, which he is to be required to deliver in person to the magistrate unaccompanied by any officer of police. Reg. XX. 1817. sect. 23, cl. 2.

Such recognizances, as well as those taken by magistrate to secure attendance during investigation, may be on plain paper.

1162. Under the terms of the exemption contained in art. 1, schedule B, Reg. X. 1829, viz. "mochulkas and recognizances taken from prosecutors and witnesses to secure attendance at criminal trials,"(a) the recognizances referred to in the two preceding paragraphs, as well as the mochulkas which it is the common practice for magistrates to take from parties in cases before them to secure their attendance during the investigation, may be taken upon unstamped paper. Const. No. 679.

Mochulkas to be required from defendants as seldom as possible; but if necessary, the prosecutor is to provide the stamp in the first instance.

1163. Mochulkas or recognizances should be required from defendants in petty cases, in order to secure their attendance, as seldom as possible; but, if it appears necessary in any particular instance to require a mochulka from the defendant, the amount of the stamp must in the first instance be provided by the prosecutor,—to be refunded by the defendant at the conclusion of the case, if the magistrate considers it proper to order a refund. Const. No. 1287.

(a) It may be useful to remark that these words are not inserted in the government copies of the regulations, or in the edition printed at the Baptist Mission Press; they were published afterwards as an "erratum."

SECTION VI.

OF SEARCH FOR STOLEN PROPERTY, AND OF UNCLAIMED PROPERTY.

Form of warrant.

1164. Warrants of search for stolen property are to be drawn out in the form No. 9½ of appendix A. Reg. I. 1811. sect 11, cl. 2.

To whom they are to be addressed.

1165. All search warrants, issued under this section, are to be addressed to the police darogah, within whose jurisdiction the house or premises required to be searched are situated, or to any other public and registered officer of police to whom the magistrate thinks fit to commit the execution of that duty. Reg. I. 1811. sect. 11, cl. 3.

Upon what information they may be issued.

1166. Search warrants for the recovery of stolen property are not to be issued, unless the complainant or informer makes oath or subscribes a solemn declaration that a robbery has been actually committed, and that he has reasonable cause to suspect that the effects stolen are lodged in such a house or place, or unless it appears incidentally, from any proceeding holden by the magistrate, that there are grounds to believe that stolen property is there deposited. Reg. I. 1811. sect. 11, cl. 4.

1167. Under these provisions a magistrate may issue, or require the magisterial authorities of another jurisdiction to issue, a search warrant upon any incidental information before him. N. A. R. vol. 1, page 273.

Police officers are not to search the interior of a dwelling without a written declaration, or special orders from the magistrate.

1168. The darogahs of police are prohibited, except under the special orders of the magistrate, from searching the interior of any house or building for stolen property, unless a list of the articles missing is delivered or taken down in writing at the thana with a declaration, stating that a robbery has been committed, and that the informant, whether he is the owner of the property, or accomplice in the offence, or other person, has substantial ground to believe that the property is deposited in such house or place. Reg. XX. 1817. sect. 16, cl. 2.

Execution of warrants to be reported.

1169. In the case of search warrants issued from the magistrate's office, the police officers are to report the execution of the process on the back of the warrant. Reg. XX. 1817. sect. 16, cl. 3.

Representations regarding stolen property are to be sent to the magistrate.

1170. The darogahs, when not specially instructed by the magistrate, are to transmit all representations made to them, regarding the receipt or concealment of stolen property, at or before the time when they proceed to the search, for the information of the magistrate, and for any orders which he may deem it necessary to issue on the subject. They are also to take the necessary precautions for preventing any such property from being clandestinely removed. Reg. XX. 1817. sect. 16, cl. 4.

Particulars relating to search.

1171. The search for stolen property is to be proceeded on without previous notice being given to the owners or inhabitants of the house, and is uniformly to be made in the day time, unless there is substantial reason to believe that, in case of any delay, the pro-

perty sought will be removed. The process is invariably to be conducted by the darogah, mohurrir, or jemadar, in person; and if the darogah cannot himself proceed, he is to issue a warrant according to the form No. 18 of appendix A. The search is to be made in the presence of three or more respectable inhabitants of the village, in which the house or place searched is situated, who are to subscribe their names to the report made to the magistrate's office; and an opportunity is, in every instance, to be afforded to the occupant of the house of attending the search. Reg. XX. 1817. sect. 16, cl. 5.

What persons are to be present.

1172. If a magistrate has in any instance reasonable ground to apprehend, that stolen property will be removed if the search is postponed, he may order the search to be made immediately, whether it is during the day or night. Reg. I. 1811. sect. 11, cl. 13.

Magistrate may order the search to be made at night.

1173. In conducting the search directed by the above rules, the police officers are to be careful that no articles of property are surreptitiously introduced into the habitation at the time of search, and no prosecutor, or informer, or any other person, is to be permitted to enter, unless he allows himself to be strictly examined in the first instance. Reg. XX. 1817. sect. 16, cl. 6.

Caution against the surreptitious introduction of articles into the house under search.

1174. If the occupant of the house, ordered to be searched, is of such a rank in society as would render it improper and objectionable, according to the prevailing opinions and usages of the country, for the police officers to enter the zenana or apartments of the women, they are to give due notice for the removal of any women within the zenana; and, after furnishing means for their removal in a suitable manner (if they are women of rank who, according to the customs of the country, cannot appear in public) they are to enter the zenana apartments for the purpose of completing the search, using at the same time every precaution consistent with these provisions for preventing the clandestine removal of property. Reg. XX. 1817. sect. 16, cl. 7.

Rules to be observed in searching zenanas.

1175. If, on examining the premises ordered to be searched, any property is discovered which is alleged by the complainant or informer at whose instance the search is made to have been stolen or plundered, or which there may be any other reasonable ground to believe has been acquired by theft or robbery, the police officers are to endeavour to trace the actual proprietor from whom the property has been plundered or stolen, and are to question the occupant of the house regarding the means by which the property was obtained; and in the event of his being unable to give a satisfactory explanation, they are to forward the property, together with the person in whose house it has been discovered, to the magistrate. Reg. XX. 1817. sect. 16, cl. 8.

When any property, alleged to be stolen, is found, what steps the police are to take.

1176. Should any suspicious property be discovered in the course of a search conducted under the foregoing provisions, and should no person lay claim to the same, the police darogah is to compare the articles with such lists of property stolen or plundered, as have been previously delivered into the thana in other cases, and recorded in the register prescribed by cl. 13, sect. 8, of this regulation; and, in the event of the property corresponding with the amount given in the list, he is either to send the articles for the inspection of the supposed proprietor, or is to summon him to the thana for the purpose of identifying his property. Reg. XX. 1817. sect. 16, cl. 9.

Rules for the disposal of suspicious property found in the search but unclaimed.

Particulars of the finding to be noted; and all property to be forwarded without delay to the magistrate with a particular despatch.

1177. On the occasion of searching a house under the foregoing rules, the police officer is to be careful to notice the particular spot in which the property is found, the time of finding, and the name of the finder; and all property which is claimed as having been stolen or plundered, as well as all property of a suspicious nature found on persons charged with robbery, burglary, or theft, or which is seized by police officers under suspicious circumstances, is to be forwarded without delay to the magistrate together with a despatch drawn up in the form No. 12 of appendix C. A copy of the despatch being registered as prescribed by cl. 11, sect. 8, of this regulation, the original is to be given to the burkundaz, charged with the conveyance of the property, to be delivered to the nazir on his arrival at the sudder station. Reg. XX. 1817. sect. 16, cl. 10.

Care is to be taken regarding this despatch, which is to be filed in original on the record of trial in sessions court.

1178. Police officers are to be particular in the transmission of the despatch prescribed above. A session judge, presiding at any trial at all depending on the question of the discovery of stolen property by police officers on a search, is to enter the original despatch upon the record of the trial. C. O. No. 247 of vol. 1.

Rules for transmission of valuable articles of small bulk.

1179. Articles of value, and of small bulk, are to be fastened up in a box, petarah, or bag, and the seal of the thana affixed. Each article of property is to have a separate number (written on paper with the seal of the thana attached to it) to correspond with the number contained in the first column of the despatch, and darogahs, when describing the property in their reports, are invariably to quote the number affixed to each article. Reg. XX. 1817. sect. 16, cl. 11.

Care to be taken by police officers in numbering and describing each article.

1180. Police officers are to pay strict attention to this rule, as the magistrate and session judge are required to number and describe the property in their proceedings according to the number and description used in the despatch of the police officer. C. O. No. 276 of vol. 1.

Only claimed or suspicious property is to be removed; and none to be returned without orders from the magistrate.

1181. No property is to be removed from a house by a police officer, unless it is claimed or recognized as having been stolen or plundered, or considered to be suspicious; and no property, once removed, is to be returned without the special instructions of the magistrate. Reg. XX. 1817. sect. 16, cl. 12.

A list of the property stolen is to be published in the neighbouring bazars; and persons to whom it is offered for sale are to give notice to the police.

1182. On the occurrence of a heinous robbery, burglary, or theft, the darogah is to transmit a list of the property stolen to the proprietor or manager of the estate, in which the crime has been committed, with an injunction to cause the list to be affixed in a conspicuous place, and also published in the several bazars and hauts situated in the estate; at the same time requiring all gold and silver smiths, retail dealers, and other persons, to give notice to the police officers against persons offering such articles for sale. Reg. XX. 1817. sect. 16, cl. 13.

Inquiries to be made by police from persons in whose possession the property is found.

1183. Whenever the person, in whose possession stolen property is found, denies all knowledge of the theft or robbery, and asserts that he procured the property by honest means, the police officers are to require him to state the circumstances under which he became possessed of the property, and are to endeavour to ascertain through whose hands it has passed, as well as to trace the persons by whom the robbery or theft has been committed. Reg. XX. 1817. sect. 16, cl. 14.

1184. If the person, in whose possession the property was found, is unable, after the above and such further examination as the magistrate may make, to give a satisfactory account of the means by which it was acquired, and the magistrate, on consideration of that and all the other circumstances of the case, thinks that there are strong grounds for believing that the property was actually stolen or otherwise illegally acquired, he is to detain the property, and issue a publication (supposing no person to have hitherto appeared to claim it) specifying the particular articles of property discovered and suspected to have been stolen or otherwise dishonestly acquired, and requiring any person who has claims to it to appear and establish his right thereto within six months from the date of the said publication. Reg. I. 1811. sect. 11, cl. 8.

How the magistrate is to proceed in such cases.

1185. Whenever any person advances claims to property so discovered, the magistrate is of course to put the case into a regular course of prosecution under the general regulations. Reg. I. 1811. sect. 11, cl. 9.

If claim is made.

1186. If no person appears within the six months to claim the property, and if the party in whose possession it was found has been unable to show that it was legally acquired, and to remove the suspicions which existed that it was dishonestly obtained, the property is in such case to be declared by the magistrate confiscated to government. Reg. I. 1811. sect. 11, cl. 10.

If no claim is made, and if the party found in possession cannot prove his right, the property is to be confiscated.

1187. Any person who finds within his house or premises property not his own, which he has reason to believe lost or stolen property, or to have been deposited within his house or premises with a malicious intent, is to convey it within twenty-four hours after finding it to the nearest darogah, and to report the circumstances attending its discovery. The darogah is to commit to writing the circumstances which are stated by such person, and to cause the same to be signed by him, and attested by two or more witnesses present. Such attested writing, together with the property found, is then to be forwarded by the darogah without delay to the magistrate. Reg. XX. 1817. sect. 16, cl. 15.

Persons finding suspicious property in their own premises how to proceed.

1188. Whenever the necessity may, in the opinion of the magistrate, cease to exist for retaining any longer any gold or silver ornaments, or brass or copper utensils, which have been confiscated to government, such ornaments and utensils are to be broken up and sold at his public cutcherry as bullion or old metal. Reg. I. 1811. sect. 11, cl. 11.

Confiscated ornaments and utensils to be broken up and sold.

1189. All unclaimed property, whether cattle, boats, timbers, or other goods or chattels, is to be considered as belonging to government, and the police darogahs are to forward any property of this description, which may come into their hands, to the magistrate; or if any article of unclaimed property cannot be easily moved, the darogah is to make over charge of such article to the local zemindar, manager, or head person of the village, until the orders of the magistrate in regard to its disposal can be obtained. Reg. XX. 1817. sect. 16, cl. 16.

All unclaimed property belongs to government.

Rules for its transmission.

1190. Unclaimed property is not to be confounded with the property of persons dying intestate (lawaris). All property of the former description, which comes into the hands of the police officers, is to be forwarded under the above provision to the magistrate, with whom the disposal of it clearly rests, subject of course to the control of the superintendent of police and government, without any interference on the part of the civil court. With regard

Custody and disposal of unclaimed property, and of property of persons dying intestate.

to the custody and disposal of the property of persons dying intestate, cl. 7, sect. 16, Reg. III. 1803 (*Beng.* sect. 7, Reg. V. 1799) contains a specific provision to the effect that should no claim be preferred to it for twelve months, an inventory of the property, together with a report of the circumstances of the case, is to be submitted by the judge to government; whenever therefore any property of that description comes into the hands of a magistrate, he should forward it immediately[a] to the civil judge. C. O. No. 3 of vol. 3. Const. No. 927.

Registers of such property.

1191. Registers of unclaimed property and property of intestates, disposable under the above rules, are to be kept in the prescribed forms given in Nos. 14 and 15 of appendix B. C. O. No. 151 of vol. 3.

Magistrate's competency to search houses for opium.

1192. A magistrate has no authority to direct the search of a house for the discovery of contraband opium *as such;* but he is not restricted from searching for the discovery of opium or any other deleterious drug, which, from information before him, he has reason to believe has been used as an instrument of death, and of which he considers it necessary for the ends of justice that a discovery should be effected. Const. No. 1241.

Police officers are to pay strict attention to the above rules.

1193. The search for plundered or stolen property, whether under the special orders of the magistrate, or under information received by the native officers of police, is to be conducted agreeably to the foregoing provisions; and the magistrate is to take proper notice of any instances in which the police officers deviate from the rules laid down in them. C. O. No. 55 of vol. 2.

SECTION VII.

OF DISTRAINT AND ATTACHMENT.

Upon application from an authorized distrainer for arrears of land rent, who is opposed, or apprehensive of resistance, the darogah is to depute a peon with a written process.

1194. Landholders, farmers, and their local agents, or other persons empowered by the regulations to distrain for arrears of land rent, who may be opposed, or may be apprehensive of resistance in effecting the regular distraint, or in maintaining possession of property previously distrained, may apply to the darogah of the thana, in whose jurisdiction the property is, for assistance in making or maintaining the regular distraint; and the darogah, in order to support the distrainer and to prevent a breach of the peace, on the distrainer certifying on oath or by a solemn declaration the opposition he has experienced, or the resistance which he apprehends, is to depute a muzkooree peon, with a written process, bearing the seal of the thana and the signature of the darogah, and drawn up according to the form No. 19 of appendix A. Reg. XX. 1817. sect. 27, cl. 2.

(*a*) In the rules passed by the Bengal Government "for the guidance of deputy magistrates and assistants in charge of sub-divisions," dated February 18, 1846, it is directed that this kind of property should be forwarded weekly through the magistrate to the civil court. See page 116.

Duties of peon so deputed.

1195. It is the duty of the muzkooree peon to exhibit such process to the defaulter, and to use every means in his power to prevent resistance or other breach of the peace; and unless the arrear is liquidated to support the distrainer in the exercise of the powers vested in him by the regulations.(a) He is to give due attention to the whole conduct and proceedings of the distrainer, so as to be able to give evidence thereon, if afterwards required either before the judge or magistrate. Reg. XX. 1817. sect. 27, cl. 3.

If such peon is opposed, the darogah, mohurrir, or jemadar is to proceed to his assistance.

1196. Whenever any peon so deputed deposes that he has been opposed in the execution of such duty, or the darogah is satisfied, from the representation made on oath [or solemn declaration] by the distrainer in the first instance, that any resistance has been offered, amounting or likely to amount to a breach of the public peace, the darogah is either to proceed in person or to depute the mohurrir or jemadar to support the distrainer and maintain the peace. He is also to proceed in person, or to depute the mohurrir or jemadar, whenever it is proposed by a distrainer, under the powers vested in him by the regulations,(a) to force open the outer door, or to search the private apartments of a dwelling house in which the distrainable property of a defaulter appears to have been concealed. Reg. XX. 1817. sect. 27, cl. 4.

Dwelling houses can be forced open in the presence of these officers only.

Burkundazes are to assist in distraint under orders of these officers only.

1197. The regular burkundazes of the police establishment are not to be employed to aid distrainers for arrears of land rent, except in cases where the darogah, mohurrir, or jemadar, proceeds in person under the rules above prescribed. Reg. XX. 1817. sect. 27, cl. 5.

(a) The following are the provisions under which a distrainer may force open places for the purpose of attaching property: they are expressly modified by the provisions in the text.

Distrainers are empowered to force open any stable, cow-house, barn, golah, granary, or other building, and to enter any dwelling house, the *outer* door of which may be open, (excepting the apartments in such dwelling house which may be appropriated for the zenana or residence of women), and to break open the door of any room in such dwelling house, for the purpose of attaching any property belonging to a defaulter which may be lodged therein. But if any person shall enter a dwelling house, or break open any stable, cow-house, barn, golah, granary, or other building, not occupied by, or in the possession of the defaulter, to distrain property belonging to him, and no such property shall be found therein, the distrainer shall be liable to prosecution by the occupant or possessor, for entering such house, or breaking open such stable, or other building, and the court shall award to him damages according to the circumstances of the case, with all costs of suit. When a distrainer may have reason to suppose that the property of a defaulter is lodged within a dwelling house, the *outer* door of which may be shut, or within any apartments appropriated to women, which by the usage of the country are considered private, he is at liberty to represent the same to the police darogah, within whose jurisdiction the house is situated; and on such representation the police darogah is to send a police officer to the spot, in the presence of whom the distrainer is authorized to force open the *outer* door of the dwelling house, in which he may have reason to suppose the defaulter's property to have been lodged, in like manner as he is above authorized to break open the door of any room within a dwelling house, except the zenana. He may also, in the presence of the police officer, after due notice given for the removal of any women within the zenana, and after furnishing means for their removal in a suitable manner, if they be women of rank who according to the custom of the country cannot appear in public, enter the zenana apartments for the purpose of attaching any of the defaulter's property deposited therein; but such property if found shall be immediately removed from such apartments, after which they are to be left free to the former occupants; and nothing in this section is to be understood to authorize any distrainer, or his agent, to force open the outer door of a dwelling house, or to enter the apartments of women, which by the usage of the country are considered private, in any other mode than that herein prescribed; a wilful deviation from which will subject the offender to heavy damages, besides forfeiture of the arrear of rent on account of which the distress may be levied. *Beng.* Reg. XVII. 1793. sect. 21, modified by Reg. VII. 1799. sect. 10. *Ben.* Reg. XLV. 1795. sect. 19, modified by Reg. V. 1800. sect. 10. *Ced. Prov.* Reg. XXVIII. 1803. sect. 19, cl. 1 and 2.

Landholders, indigo planters, and others are not to use stocks or other instruments of restraint.

1198. The landholders, farmers, and other local agents, and indigo planters, and other persons, are prohibited from using stocks, or any other instrument of restraint, for the purpose of confining ryots, or other individuals indebted to them, on any account whatever, and the darogahs of police are to report to the magistrates, for such orders or process as appear proper under the general regulations, all instances which come to their knowledge of a violation of this rule. Reg. XX. 1817. sect. 27, cl. 6.

Allowance and mode of payment of peons, not in the service of government, employed under the above provisions.

1199. Whenever a muzkooree peon, not receiving wages from Government, is employed by a police darogah under the above provisions, he is to receive tullubana from the person, at whose instance he is employed, at the rate of two annas per diem; and the darogah is not to issue any process by the hands of a muzkooree peon, until the estimated amount of the tullubana, required for his fixed allowance at the above rate during his employment, is deposited in advance. The darogahs are enjoined to prevent the muzkooree peons from demanding or receiving, directly or indirectly, from any party, in cases in which they are employed, any allowance or gratuity, exceeding the above rate; and are to report to the magistrate any instances which come to their knowledge of a violation of this rule. Reg. XX. 1817. sect. 27, cl. 7.

Check on the employment of muzkooree peons by the police.

1200. In order to check as much as possible the employment of muzkooree peons in cases not strictly provided for in the regulations, magistrates are to require their darogahs to report whenever they employ persons of that description; stating their reasons for so doing, and by whom the tullubana (which is never to exceed the rate specified above) has been defrayed. C. O. No. 329 of vol. 1.

Unfounded complaints by under-tenants against distrainers or persons collecting rents.

1201. It being a frequent practice with under-tenants to lodge unfounded complaints in the criminal court against persons attaching their property, as well as against the officers employed in collecting their rents, and likewise to cause their being summoned as witnesses in causes with the merits and circumstances of which they are totally unacquainted, for the sole purpose of creating embarrassment and delay in the collection of the rents, the courts of justice are required at all times to discourage and punish such culpable practices, as far as the power vested in them by the regulations may admit. Sect. 10, Reg. IX. 1793,* is to be strictly enforced in all cases of litigious and unfounded complaints, of the nature herein referred to, before the magistrate. *Beng.* Reg VII. 1799. sect. 12. *Ben.* Reg. V. 1800. sect. 12.

* *v.* ¶ 267 *et seq.*

Breach of the peace in resisting legal attachment.

1202. If any under-tenant resists or causes to be resisted the legal attachment of his property for arrears of rent, he and all persons concerned with him in resisting the attachment are liable to be apprehended and prosecuted before the criminal courts for any breach of the peace committed by them in such resistance to the attachment. *Beng.* Reg. VII. 1799. sect. 9. *Ben.* Reg. V. 1800. sect. 9. *Ced. Prov.* Reg. XXVIII 1803. sect. 17, cl. 2.

Custody of property attached and responsibility of person taking charge of it.

1203. No person can be compelled against his will to take charge of property distrained, or attached. If however any one should take charge of the property voluntarily, he of course becomes responsible for the faithful discharge of his engagement, and is liable to prosecution before the civil court for damages which may have arisen from his failing to do so. No summary proceedings, however, can be instituted against him. Generally the person, at whose instance the property is distrained or attached, must be considered answerable for the safe custody of it during the period of distraint or attachment. Const. No. 958.

1204. In cases of distraint for arrears of rent, the punishment for resisting or breaking attachment is prescribed by sections 19 and 20, Reg. XVII. 1793, and the corresponding enactments for Benares and the ceded provinces, consists of imprisonment and damages to be enforced by the civil courts. But there appears to be no enactment regarding such offences where the distraint has been made by the magistrate; and it would seem that he must proceed as in a case of resistance of process, for which subject see section 10, page 222.

Punishment for breach of attachment made by magistrate.

SECTION VIII.

OF EXECUTION OF PROCESS WITHIN THE LIMITS OF THE SUPREME COURT.

1205. It is lawful for the court of nizamut adawlut to execute or cause to be executed, upon all persons subject to the jurisdiction of such court, all manner of lawful process of arrest within the limits of the town of Calcutta, in the same manner as such court may, by virtue of any power now vested or hereafter to be vested in it, lawfully execute or cause to be executed such process in any place without the said limits, any Act, charter, or other matter or thing to the contrary notwithstanding; provided always that all such process, which is executed within the limits aforesaid, is in writing, and has underwritten or indorsed thereon, or otherwise annexed thereto, a translation thereof, or of the substance thereof, in the English language and character, signed by one of the judges of the court from whence it issued. 53 George III. cap. 155, sect. 113.

Nizamut adawlut may execute as in other places.

Process to be in writing, with English translation, and signed by a judge.

1206. Any writ, warrant, or other process, issued by any court, judge, or magistrate in the territories beyond the local limits of the supreme court, may be executed within those limits in manner following:—a copy of such writ, warrant, or other process authenticated as such by the attestation of the court, judge, or magistrate, signing or issuing the same, accompanied by a certified translation in the English language, is to be presented to any judge of Her Majesty's court, who may thereupon, under his hand and signature, indorse and direct the same to be executed by the sheriff, or by any justice of the peace, according to the nature of the process. Act XXIII. 1840. sect. 1.

Mofussil courts to execute by sending copy of process for the indorsement of a judge of the supreme court.

1207. Upon the delivery of the process so indorsed to the sheriff, he is to make a memorandum of the date of such delivery, and is to execute the process in like manner as if it had originally issued from Her Majesty's court, and had been delivered at the date as appearing by the memorandum; and the sheriff is to make no distinction as to priority or otherwise between the execution of any process originally issued from Her Majesty's court, and the execution of any process under this Act. But all processes, whether original, or indorsed as aforesaid, are, amongst each other, to be subject to the same rules touching the mode and order of execution as are now established in respect of processes originally issued from Her Majesty's courts of justice. Act XXIII. 1840. sect. 2.

Such copy to be delivered to sheriff who is to execute it as a process of the supreme court.

Sheriff may be proceeded against regarding the execution of,—and persons and property to be detained under,—such process, as if process of supreme court.

1208. The sheriff is liable to be proceeded against in Her Majesty's courts of justice for all matters touching the execution of any process executed under this Act, in like manner as if the same had originally issued from Her Majesty's court. And all persons and property seized or detained under any process executed by virtue of this Act are to be dealt with in like manner as if such persons or property had been seized or detained under the like process issued from Her Majesty's court. Act XXIII. 1840. sect. 3.

Persons disobeying or obstructing execution to be punishable as if process of supreme court.

1209. All persons disobeying or obstructing the execution of any process indorsed under this Act, are punishable in Her Majesty's courts of justice, in like manner as if the same had issued from such courts; provided that, in the case of process for attendance of witnesses, Her Majesty's courts are to be governed by the like rules touching expenses and other matters as are established in regard to subpœnas issued from such courts. Act XXIII. 1840. sect. 4.

Persons detained under such process to be delivered to the persons indicated in the indorsement.

1210. In the case of persons seized or detained by virtue of any process executed under the authority of this Act by any justice of the peace or sheriff, it is the duty of such justice of the peace or sheriff, if so required by the indorsement of the judge, to deliver the party in custody to such authority or persons as are particularly specified in such indorsement, and who have been charged with the execution of the process by the authority originally issuing it, and for that purpose to cause the party in custody to be conveyed to any place within the Company's territories beyond the jurisdiction of Her Majesty's courts. Act XXIII. 1840. sect. 5.

Judge of supreme court may remit the process for amendment;

1211. In the case of any process required to be indorsed under the authority of this Act, it is lawful for the judge, who is required to indorse the same, to remit it for amendment to the authority issuing the same, if it appears to be defective in any matter of form. Act XXIII. 1840. sect. 6.

and may direct bail to be taken.

1212. In the case of any process, required to be indorsed under the authority of this Act, for the seizure or detention of any person, it is lawful for the judge, who is required to indorse the same, to direct by indorsement that bail (the amount and number of sureties to be specified in such indorsement) may be taken; and for this purpose to call for such documents and to make such inquiry as he thinks proper. Act XXIII. 1840. sect. 7.

Rules for service under the above provisions:

1*st*. How to be directed and sent.

2*nd*. Money how to be sent.

3*rd*. Process of subordinate court.

4*th*. Forms.

1213. The following rules are to be observed in the service of processes under the above provisions. *First*. Every criminal process is to be directed to the justices of the peace of the town of Calcutta, but forwarded in an envelope to the Company's attorney, either by dawk or by the hands of a peon or other public officer as may be most convenient, with a letter drawn up in the form No. 20 of appendix A. The Company's attorney is to prepare it for indorsement by a judge of the supreme court, and after indorsement to transmit it (accompanied with the letter above-mentioned) to the police office for execution. *Second*. Any money, that it is requisite to send, is to be remitted by a bill on the general treasury from the collector of the district. *Third*. All subordinate judicial officers are to submit the processes of their courts, which require execution under the above provisions, to their European principal, to be by him forwarded in the prescribed manner to the Company's attorney. *Fourth*. All processes are to be drawn up agreeably to the forms Nos. 20½ to 28 of appendix A, or agreeably to such other forms as

may from time to time be circulated by the nizamut adawlut. *Fifth.* The party, at whose requisition any witnesses are summoned, must be prepared to pay to the witness such sum for his expenses as the judges of the supreme court consider reasonable and proper. *Sixth.* Judges and magistrates are to be careful that their own processes are drawn up correctly, and they are also to ascertain that the processes of the subordinate courts, that are forwarded to the Company's attorney, are drawn up agreeably to these rules and to the Acts and regulations of government. C. O. Nos. 82, and 185 of vol. 3.

5th. Expenses of witnesses.

6th. Processes to be drawn up correctly.

1214. In cases of failure to serve summons, the warrant to be issued under Act X. 1845* is to be drawn out in the form No. 29 of appendix A. For form of writ for attachment of property of persons absconded, see No. 29½ of appendix A. C. O. No. 205 of vol 3; and No. 11, dated August 28, 1846.

Further forms.

* *v. para.* 1095.

1215. The above provisions indicate the manner in which subpœnas, issued by the mofussil authorities, are to be executed within the local limits of the supreme court; and they are therefore to refrain from sending requisitions to the chief magistrate of Calcuttá for the purpose of obtaining the evidence of witnesses residing in Calcutta. C. O. No. 76 of vol. 3.

No requisition to be made to chief magistrate of Calcutta.

1216. Whenever a magistrate has occasion to apply for the apprehension of an individual in Calcutta, he is invariably to depute an officer of his own court for the purpose of receiving charge of such person, and of undertaking the responsibility of securing his appearance at the station of the magistrate, without exposing such individual to the hardship of unnecessary detention at the presidency. C. O. No. 40 of vol. 2.

In the case of process of arrest an officer is to be deputed to receive charge of the person arrested.

SECTION IX.

OF AID TO BE GIVEN TO PROCESS OF SUPREME COURT.

1217. When a sheriff's officer, entrusted with the execution of a writ of capias issued by the supreme court against parties residing in the mofussil, has occasion to call upon the magistrate for assistance, the magistrate ought to render it: but such assistance must be confined to the legal execution of the writ; as for instance the police officers furnished by the magistrate ought not to aid the bailiff in breaking into a house (though they accompany him if he enters the premises without breaking in); but they ought to prevent any breach of the peace when the arrest is made, or rescue after it has been made. In regard to the question how far the magistrate is required to assist the sheriff's officer in conveying a prisoner to Calcutta, it seems that he must be guided by the peculiar circumstances of the case; *i. e.* he *may*, without incurring any legal responsibility, take such measures as are necessary to insure the peaceable execution of the process within the limits of his jurisdiction: but the bailiff is equally empowered, after the arrest, to take steps before the nearest justice of peace to have the prisoner bound over to keep the peace towards him, or to hire a sufficient number of persons to prevent his escape. *Opinion of the Advocate General* in C. O. No. 8, June 12, 1846; and No. 10, July 10, 1846; in Bengalee gazette, pages 480 and 522.

How far a magistrate is bound to assist a sheriff's officer in the execution of a writ of capias; and in the conveyance of the prisoner to Calcutta.

Execution of decrees not to be aided without writ.

1218. The civil courts are not to interfere with the execution of the decrees of the supreme court, unless a writ directing execution is issued by that court. Const. No. 567.

Tenants are not to be dispossessed of land contrary to law.

1219. Magistrates, and other public officers, are bound to give all the assistance in their power to the enforcement of a writ of the supreme court; but they have no power to remove tenants having tenures and rights, of which by the law they cannot be deprived by a mere change of proprietor. C. O. S. D. A. No. 31, May 20, 1831.

A magistrate was directed not to give forcible aid to expel from possession a party who held under a decree of a competent provincial court.

1220. In execution of a decree of the supreme court in favor of A, founded on a deed of mortgage executed by B, the magistrate was considered to have acted judiciously in refusing to use forcible means to oust a third party from property in their possession, which they held under a decree of the provincial court founded on a deed of agreement executed by B; and he was directed to confine his aid and assistance to the sheriff's bailiff to preventing any breach of the peace in the execution of his duty, leaving the mortgagee to sue the third party in the zillah court. Const. No. 800.

SECTION X.

OF RESISTANCE AND EVASION OF PROCESS.

All persons concerned in resisting legal process are to be apprehended by the police;

1221. If any person resists or causes to be resisted the execution of any legal warrant or process, which the officers of the magistrate's court or the police officers attempt to serve; —or endeavours to rescue any person arrested or under the custody of any such officers;— the darogah is to cause such offenders, as well as persons concerned in the resistance or rescue to be apprehended and forwarded to the magistrate with a report of the circumstances of the case and the necessary evidence. In case of actual rescue or violent resistance the darogah is, if necessary, to call in the aid of the police of the adjacent thanas, who are to conform to such requisitions, provided they are conveyed in writing. Reg. XX. 1817. sect. 26, cl. 1.

and brought before the magistrate. If they evade arrest they are to be summoned by proclamation.

1222. If any person, amenable to the authority of the magistrates or police officers, resists or causes to be resisted any warrant, order, or other process of any magistrate or police officer, the magistrate of the zillah in which such resistance has been made, on the same being charged on oath is, if practicable, to cause the party accused to be apprehended and brought before him to answer to the charge. If the party absconds or conceals himself, so that he cannot be apprehended, or if on any account he cannot be immediately apprehended the magistrate is to cause a written proclamation (in the vernacular), requiring the party to appear to answer the charge against him within a fixed period, not less than one month, to be publicly read and proclaimed by beat of drum, and to be affixed in some conspicuous part of his cutcherry, as well as on the outer door of the house in which the party

has usually dwelt, or some conspicuous place in the village in which he has generally resided. *Beng. and Ben.* Reg. XI. 1796. sect. 2, cl. 1. *Ced. Prov.* Reg. III. 1804. sect. 2, cl. 1.

Mode in which police officers are to publish such proclamation;

1223. Whenever a proclamation is issued through a police darogah, by order of a magistrate requiring the attendance of any person, who has evaded or resisted the processes of the court, the darogah is, in the presence of two or more creditable persons not connected with the thana establishment, to cause such proclamation to be publicly read and promulgated by beat of drum, and affixed in the police thana, and on the outer door of the house which the party has usually inhabited, or some conspicuous place in the village in which he has generally resided. Reg. XX. 1817. sect. 26, cl. 11.

and, in case of non-appearance, to certify it to the magistrate.

1224. On the expiration of the period specified in the proclamation, if the offender does not appear to answer the charge alleged against him, the darogah is to certify to the magistrate the mode in which the proclamation has been issued, and the date, time, and place of promulgation, and is to send a sufficient number of witnesses to prove the due publication of the process. Reg. XX. 1817. sect. 26, cl. 12.

After expiry of term fixed in proclamation, judgment may be had, whether defendant is present or not.

1225. If the party so charged cannot be apprehended, and does not within the fixed period appear to answer the charge,——or if he is apprehended or appears in pursuance of the proclamation, and after receiving his answer to the charge and hearing the evidence he adduces in his defence, it is proved to the satisfaction of the magistrate that he is guilty of the charge,——the magistrate is to pass judgment against him in the following manner. *Beng. and Ben.* Reg. XI. 1796. sect. 2, cl. 1. *Ced. Prov.* Reg. III. 1804. sect. 2, cl. 1.

If the offender is a landholder within the zillah, his lands are to be forfeited.

1226. If the offender is a zemindar, talookdar, or other proprietor of land paying revenue directly to government; or the proprietor of altumgah, ayma, or other lands exempt from revenue, situated within the zillah or city in which the resistance was made, he is to declare such lands forfeited to government, and by a precept under his official seal and signature is immediately to give notice to the collector of the district, who on receipt thereof is to cause the lands in question to be attached on the part of government, and is to hold them in attachment till the receipt of a further precept from the magistrate to relinquish them, or of orders from government to be communicated to him as directed below. *Beng. and Ben.* Reg. XI. 1796. sect. 2, cl. 2. *Ced. Prov.* Reg. III. 1804. sect. 2, cl. 2.

If he is a sudder farmer within the zillah, his lease is to be cancelled.

1227. If the offender is a sudder farmer holding a farm from government within the zillah or city in which the resistance has been made, the judgment against him is to declare his lease cancelled; and the magistrate, by a precept under his official seal and signature, is immediately to give notice to the collector, who is to proceed as above. *Beng. and Ben.* Reg. XI. 1796. sect. 2, cl. 3. *Ced. Prov.* Reg. III. 1804. sect. 2, cl. 3.

If he is a landholder or sudder farmer in any other zillah, the same provisions apply.

1228. If the person convicted of resisting or causing to be resisted the process of a magistrate or police officer, is a proprietor of land or a sudder farmer paying revenue to government in any zillah or city jurisdiction, not being that in which the offence has been committed, and it appears just and proper, on due consideration of the circumstances of the case, to extend the penalty of forfeiture, declared in the above provisions, to the whole or any part of such lands or farms, it is competent to the magistrate to adjudge the same, subject to the prescribed confirmation of the nizamut adawlut, and the final orders of the government. Reg. XX. 1817. sect. 26, cl. 3.

But such orders are not final until confirmed by the nizamut adawlut.

1229. The judgment passed by the magistrate under the preceding provisions are to be immediately reported, with a complete copy of the proceedings, to the nizamut adawlut; and are not to be considered final and conclusive, until the orders of that court are received under the following section. *Beng. and Ben.* Reg. XI. 1796. sect. 2, cl. 5. *Ced. Prov.* Reg. III. 1804. sect. 2, cl. 6.

The nizamut adawlut how to proceed on receipt of the proceedings in such case.

1230. The nizamut adawlut, on receipt of the proceedings, are to pass such order thereupon as they think proper, on due consideration of the evidence and all the circumstances of the case; and in all instances wherein the forfeiture of the offender's lands or lease appears to them too severe a punishment for the offence, they are authorized to commute it for such fine to government as they think adequate, and order the attachment of the lands to be taken off on the payment thereof. The sentence of the nizamut adawlut is to be final in all cases of fine, and imprisonment; but in case they confirm the judgment of the magistrate for a forfeiture of the offender's land or lease, they are, previously to ordering such sentence to be carried into execution, to transmit their proceedings with those of the magistrate to government, who are finally to determine whether the sentence of forfeiture is to be put in force, or commuted to fine, or otherwise; and who, whenever they order the land or lease of the offender to be forfeited, are at the same time to cause the necessary instructions for the future disposal of the land to be sent to the collector. In case the magistrate's judgment of forfeiture is set aside, either by the nizamut adawlut or government, he is immediately on being informed thereof, and on receipt of the fine (if a fine is ordered), to issue a precept to the collector, requiring him to remove the attachment, and to cause a full and fair account to be rendered of all receipts and disbursements during the period of attachment. *Beng. and Ben.* Reg. XI. 1796. sect. 3. *Ced. Prov.* Reg. III. 1804. sect. 3.

The final order of forfeiture must be passed by government.

If the offender is not a landholder or sudder farmer, he is to be punished by fine, recoverable by distraint;

or, in failure of fine, by imprisonment.

1231. If the offender is not a proprietor of land or sudder farmer paying revenue to government, as described above, the judgment against him is to declare him liable to the payment of such fine to government as appears proper upon a consideration of his rank and circumstances in life, and the offence of which he is convicted; and the magistrate is immediately to proceed to the attachment of any property appertaining to the offender for the recovery of the same, in the manner authorized by the regulations for the recovery of sums of money decreed by the civil courts. When the offender has been apprehended, and is not possessed of property adequate to the discharge of the fine adjudged against him, the magistrate may commute such fine to imprisonment. *Beng. and Ben.* Reg. XI. 1796. sect. 2, cl. 4. *Ced. Prov.* Reg. III. 1804. sect. 2, cl. 4.

In minor cases the magistrate may, if he thinks it sufficient, pass the same sentence as in other petty offences.

* *v.* ¶ 505.

1232. In cases of resistance of process not attended with aggravating circumstances, wherein the magistrate judges it sufficient to inflict the punishment which he is authorized to inflict for petty offences under sect. 8, Reg. IX. 1793,* it is not necessary to transmit his proceedings for the consideration of the nizamut adawlut, but his judgment is to be executed without reference under the general rules in force regarding appeals and revision of cases. *Beng. and Ben.* Reg. IX. 1801. sect. 5. *Ced. Prov.* Reg. III. 1804. sect. 2, cl. 5.

But, in all cases the magistrate may, if he thinks it sufficient, [illegible]

1233. But, in all instances of resistance to the process of a magistrate or police officer, wherein the magistrate is of opinion that a fine to government not exceeding 200 rupees, commutable if not paid to imprisonment not exceeding 6 months, is an adequate punish-

ment for the offence, he is authorized to adjudge the same instead of a forfeiture of land or farm; and his judgment in such cases, as well as in all cases wherein a similar judgment is passed by him against persons not being proprietors of land or sudder farmers, is not referrible to the nizamut adawlut, but is final, unless altered or rescinded by the superior criminal courts under the general rules in force. Reg. XX. 1817. sect. 26, cl. 5.

sentence of fine commutable to imprisonment. And in all cases not including forfeiture of land or farm the judgment of the magistrate is final.

1234. If any person charged with an offence of a criminal nature, absconds or conceals himself, so that upon a process issued against him by a magistrate or police officer he cannot be found, the magistrate is to cause a written proclamation (in the vernacular language requiring the absent party to appear to answer the charge within a fixed period, not less than one month, to be publicly read and proclaimed by beat of drum; and is to cause such proclamation to be affixed in some conspicuous part of his cutcherry, as well as on the outer door of the house in which the party has usually dwelt, or some conspicuous place in the village in which he has generally resided.* In case the party does not appear and deliver himself up within the fixed period, the magistrate, on receiving the nazir's return to this effect, is to order the attachment of any land or other real property held by the absentee, within his jurisdiction, in the following manner. *Beng. and Ben.* Reg. XI. 1796. sect. 4, cl. 1. *Ced. Prov.* Reg. III. 1804. sect. 4, cl. 1.

Any person charged with a criminal offence, absconding or evading process, is to be summoned by proclamation.

* *The rules, under which the police officers are to publish such proclamation (v. paras: 1223 and 1224) apply equally here.*

If he does not appear his land or property within the zillah is to be attached.

1235. If the absentee is a proprietor of land, or sudder farmer paying revenue immediately to government, he is to issue a precept, under his official seal and signature, to the collector of the district, requiring him to hold the land or farm of the absentee in attachment, till the receipt of further notice. And the collector is accordingly to obey such requisition and to take such measures as are necessary for the due care and management of the lands while under his charge, subject to the instructions of the commissioner of revenue, to whom he is to make an immediate report of any instances of lands being delivered over to him under these provisions; he is also to relinquish such lands, on being advised by the magistrate that the attachment has been taken off on the attendance of the absentee; and is to cause a full and fair account to be rendered of all receipts and disbursements during the period of attachment. *Beng. and Ben.* Reg. XI. 1796. sect. 4, cl. 2. *Ced. Prov.* Reg. III. 1804. sect. 4, cl. 2.

Attachment how to be made, if the absentee is a landholder, or sudder farmer;

1236. If the absentee is not a proprietor or farmer of land paying revenue to government, but, as a dependant talookdar, under farmer, or ryot, or in any other capacity whatever, is the tenant of landed property capable of attachment, the magistrate is to issue a precept to the collector of the district, directing him to attach the same, and adopt the necessary measures for the due care and management of it while under his charge; paying from the product any rent which becomes due to the zemindar or other person entitled thereto; and deducting all necessary expences in the account to be rendered to the absentee, whenever he may attend and the attachment of his property is removed. *Beng. and Ben.* Reg. XI. 1796. sect. 4, cl. 3. *Ced. Prov.* Reg. III. 1804. sect. 4, cl. 3.

and, if he is not such, but a tenant of landed property, capable of attachment.

1237. If a person charged with an offence of a criminal nature, who absconds or conceals himself, so that the process issued against him cannot be served, possesses land or other immovable property, or a sudder farm paying revenue to government, in any other zillah or city jurisdiction, than that wherein the offence charged against him has been com-

So, if he possesses land or other immovable property in any other zillah.

mitted, and it appears necessary to attach the same with a view to cause his attendance under the above provisions, it is competent to the magistrate to order the attachment of the whole or any part of such property or farm, and the above provisions are to be considered applicable in such cases. Reg. XX. 1817. sect. 26, cl. 4.

Attachment to be removed on the attendance of the absentee.

1238. In all instances wherein an attachment of property is ordered under the foregoing rules, the magistrate, immediately on the attendance of the party for whose appearance it was ordered, is to direct, by a written precept, that the attachment be removed, and that a full and fair account be rendered of all receipts and disbursements during the period of attachment. *Beng. and Ben.* Reg. XI. 1796. sect. 5. *Ced. Prov.* Reg. III. 1804. sect. 4, cl. 4.

Attachment may not be continued after his appearance.

1239. If the absentee appears to answer the charge within the six months mentioned above, the magistrate is not authorized to continue the attachment. Const. No. 414.

If the absentee does not attend within six months, report to be made to government.

1240. If the absentee neglects to attend for a period of six months after the lands have been ordered under attachment, the magistrate is to report the case to government, who is to pass such order upon it, and upon the future disposal of the lands, as may be deemed proper. *Beng. and Ben.* Reg. XI. 1796. sect. 6. *Ced. Prov.* Reg. III. 1804. sect. 4, cl. 5.

The movable property of persons resisting or evading process may be immediately attached, in case of suspicion of removal.

1241. If any person amenable to the authority of the magistrates and police officers resists or causes to be resisted any warrant, summons, or other process of any authorized magistrate or police officer, and such person cannot be apprehended; or if any person charged with a criminal offence of a heinous nature absconds or conceals himself, so that, on a warrant issued against him at his usual place of residence by the local magistrate or police officer, he cannot be found; and the party so resisting or evading the process is not a proprietor or sudder farmer of land capable of attachment under the above provisions, but is in possession of any movable property, which can be attached, and the removal of which might be expected, if not placed under immediate attachment, the police officer, issuing or serving the warrant in such cases, is authorized on receipt of credible information, that the person against whom the warrant is issued has recently absconded, or concealed himself for the purpose of evading it, to cause the attachment* of any movable property belonging to such person within his jurisdiction; giving at the same time immediate information to the magistrate of the district, whose previous instructions are to be applied for, when there is reason to expect a removal of the property. Reg. XX. 1817. sect. 26, cl. 6.

* *For form of writ of attachment in such cases, see appendix A. No. 29½.*

Property so attached is not to be removed, until the orders of the magistrate are received.

1242. The magistrate, on receipt of the information directed in the above clause, is to determine whether the case is such as to require a continuance of the attachment, till the appearance of the accused person, or till a proclamation has been issued for his attendance under the above provisions; and is to transmit instructions to the police darogah accordingly, either for the release of the property attached by him, or for continuing the attachment, and taking an inventory of the property in conformity with the following clause. Till the receipt of such instructions the police officers are to adopt such measures only as are requisite to prevent a removal of the attached property. Reg. XX. 1817. sect. 26, cl. 7.

Inventory to be taken of articles attached, and acknowledgment from parties receiving charge.

1243. On receipt of the magistrate's instructions for an attachment of movable property the darogah, in the presence of two or more respectable inhabitants of the place, is to cause an exact inventory of the articles attached to be taken and duly attested; after which he is

to deliver the property in charge to the headman or any two or more respectable inhabitants of the place, taking an acknowledgment for the same, which is to be forwarded, together with an inventory of the property, to the magistrate. Reg. XX. 1817. sect. 26, cl. 8.

Such property is to be carefully preserved, and a strict account rendered on the removal of attachment.

1244. In all instances, where an attachment of property is made under the foregoing rule, the darogahs are to enjoin the persons, into whose charge the same is delivered, to take care that there is no injury done to the property; and if the person charged appears, within the period specified in the proclamation, the magistrate is immediately on the attendance of the party, to cause the attachment to be removed, and a full account rendered of the property attached, subject only to any unavoidable expense which has attended the attachment. Reg. XX. 1817. sect. 26, cl. 9.

Disposal of property in the event of the proclaimed person not appearing, in a case of resistance,

and in a case of evasion of process.

1245. If the proclaimed person does not appear within the period fixed by the proclamation, the attached property in cases of resistance of process is liable to public sale, by order of the magistrate, for the purpose of making good any fine imposed on the offender; or should the attachment of movable property have taken place under an evasion of process it is at the end of six months, supposing the absentee not to attend during that period, to be at the disposal of government, in common with any landed property attached under similar circumstances in pursuance of the regulations in force. Reg. XX. 1827. sect. 26, cl. 10.

The above provisions are not applicable to persons absconding after conviction.

1246. The above provisions are applicable only to persons *charged* with a crime, but not convicted. Thus, the property of a person, who absconded after sentence and pending appeal, was held not liable to forfeiture. Const. No. 1124.

Bail is admissible in cases of resistance of process.

1247. Persons apprehended on a charge of resistance of process under the above provisions, and who are not accused of any aggravating crime, in addition to the resistance of process, such as is declared not bailable by sect. 7, Reg. IX. 1793, or sect. 4, Reg. XVI. 1795,* are to be admitted to bail until a final decision has been passed upon the charge; provided the bail offered by them appears to the magistrate, or other public officer to whom the charge is preferred, sufficient for securing their appearance during the prescribed investigation of the case. *Beng. and Ben.* Reg. IX. 1801. sect. 4. *Ced. Prov.* Reg. III. 1804. sect. 5.

* *v. paras*: 1139 *and* 1140.

Persons charged with resistance may appear by vakeel.

1248. A person on whom a summons has been issued to answer a charge of resistance of process, is at liberty to answer such charge through a vakeel without being obliged to appear in person,—as the object of a summons in such case is to give the summoned party an opportunity of defending himself against the charge, which is distinct from ordering his apprehension after conviction, in consequence of non-payment of fine, with a view to his imprisonment. Const. No. 1216.

Resistance of process of one court aided by another.

1249. When a process issued by a court of one zillah, and backed and aided by the court of another zillah, is resisted, it is considered as the resistance of the process of the court within whose jurisdiction it took place. Const. No. 1115.

Resistance is not punishable as an affray.

1250. Cases of resistance of process should not be punished as affrays, since that offence has its appropriate penalty. Const. No. 549.

Evasion cannot be punished as a contempt of court.

1251. As the course of procedure against persons evading the process of a criminal court is distinctly laid down in the above provisions, the magistrate's views of expediency cannot justify his deviating from that course, and punishing persons guilty of that offence as for a contempt of court. Const. No. 619.

Nor can a case of simple resistance be committed to the sessions.

1252. A charge of resistance of process is not a fit subject of commitment to the sessions court: the magistrate must proceed according to the above provisions. N. A. R. vol. 2, page 225.

Precedents of cases.

1253. Three prisoners were convicted of murder in assaulting and opposing a military party employed on the public service; and sentenced, the ringleader to suffer death, and the others as accomplices to imprisonment in transportation for life. N. A. R. vol. 1, page 56.

1254. A havildar and two sepoys, charged with rescuing two persons from the custody of the police and magistrate's officers, and acquitted—the havildar, because he acted under instructions from a person whom he deemed himself bound to obey; and the sepoys, because they acted in obedience to the orders of the havildar, their immediate superior officer. N. A. R. vol. 2, page 330.

Register to be kept up of persons absconded.

1255. The magistrate is to keep up and regularly revise, according to the form given in No. 2 of appendix B, a vernacular register of persons charged with or suspected of the commission of specific crimes of a heinous nature, who have eluded the pursuit of justice. A copy of this register is to be forwarded half yearly to the superintendent of police. Reg. III. 1812. sect. 9, cl. 1 and 2. C. O. No. 144 of vol. 3, para. 6.

Police officers are to assist persons required to produce offenders; and to take charge of them if required.

* *See chapter "Of landholders" in Book 2.*

1256. If any zemindar, farmer, local manager or other person, to whom a magistrate has issued a warrant or order, in pursuance of Reg. III. 1812,* or any other regulation in force, for the apprehension of a person proclaimed or charged with or suspected of a crime, applies to a police officer for co-operation and support in the execution of it, the police officer is to afford every assistance in his power for the due enforcement of the process; and, if required so to do, in conformity with cl. 6, sect. 9, Reg. III. 1812, is to receive charge of the prisoner from the zemindar, or other person, and is to grant a written acknowledgment, specifying the name of the prisoner and the date on which he was delivered into his charge; he is also without delay to forward the prisoner under safe custody to the magistrate. If the person named in the application made to the police officer is not apprehended, the particulars of the application and of the measures taken in consequence are to be recorded, for the information of the magistrate in the thana diary prescribed by sect. 8 of this regulation. Reg. XX. 1817. sect. 26, cl. 13.

Police officers, wounding or killing offenders, are to be held guiltless.

1257. If a police officer entrusted with or assisting in the execution of any legal warrant for the apprehension of a person charged with murder, robbery, or other heinous crime, or pursuing a robber or murderer immediately after the commission of the crime, or resisting him in his attempt to perpetrate the crime, should wound or slay any offender in endeavouring to apprehend him, he is to be held guiltless of any criminal act. Reg. XX. 1817. sect. 26, cl. 14.

Of civil court.

Judge to make over those cases only which are attended with a breach of the peace.

1258. A civil judge should himself dispose of all common cases of resistance of civil process; and make over to the magistrate those cases only, which have been attended with acts of violence amounting to a breach of the peace, simply sending the papers, without passing any opinion thereon, and requesting him to dispose of the case under the general regulations. In such case the appeal would lie, from the order of the magistrate, to the judge in his capacity of session judge. Const. Nos. 1033, and 1115.

Resistance to a process of distraint, illegally executed, is a criminal act.

1259. Resistance offered by a farmer to persons legally authorized to distrain his effects is a criminal act, and punishable by imprisonment, notwithstanding that the distress is levied in an irregular manner, as the farmer always has it in his power to gain redress by an application to a court of justice. In this case, the ringleader was sentenced to imprisonment for one year, and the others for six months. N. A. R. vol. 1, page 302.

Case of resistance to a fraudulent distraint.

1260. Certain prisoners convicted of being concerned in an affray, attended with slight wounding, in resistance to a fraudulent distraint, a burkundaz being present to keep the peace, were sentenced under all the circumstances of the case to six months' imprisonment, and a fine of 15 rupees in lieu of labor. N. A. R. vol. 6, page 49.

Magistrate cannot order police to break open a house to search for a person rescued from civil process.

1261. In the event of a legal arrest by a warrant issued from the civil court, and a forcible rescue from the custody of its officers, the magistrate is not empowered to order the police forcibly to enter the house wherein the person rescued is, and to apprehend and forward him to the civil court: in such case the civil court should proceed against the offender according to sect. 25, Reg. IV. 1793. Const. No. 765.

Nor can judge require aid from magistrate.

1262. It is not competent to a civil judge in cases of resistance of the process of his court to call upon the magistrate to enforce his orders. Const. No. 1209.

Of collector.

Police officers are to aid and support execution of process; and revenue officers are to be held guiltless if affray ensues.

1263. All police officers are to aid and support the execution of all process and orders issued by a collector or other officer exercising the powers of collector, engaged in making or revising a settlement, on the responsibility of the officer issuing or executing the same; and if any affray or breach of the peace occurs in consequence of any resistance or obstruction being made or attempted to be made to the legal process or order of a collector or other revenue officer, the parties resisting or obstructing such process or order are to be punishable for the affray or breach of the peace, and the revenue officers are not to be liable to any criminal prosecution on that account. Reg. VII. 1822. sect. 24, cl. 3.

But collector cannot issue orders to police officers; he is only to warn them of his apprehension of resistance.

1264. Under the above provision, a collector, or officer exercising the powers of collector, has no authority to issue any orders direct to the police officers to aid in the execution of his process, except in very emergent cases, which should also be immediately reported to the magistrate; but in ordinary cases, whenever the collector has reason to apprehend resistance of his process, he is to communicate his apprehensions to the police darogah, who is responsible for taking such precautionary measures as are in his opinion necessary to prevent a breach of the peace. Const. No. 1018.

Police cannot issue process on the mere requisition of an ameen.

1265. It was held illegal in a thanadar to issue process on the mere requisition of an ameen, who reported by letter that certain persons were ripe for rebellion. N. A. R. vol. 2, page 225.

Cases of resistance are cognizable by magistrate only when a breach of the peace occurs.

1266. Under the powers vested in them by Reg. VIII. 1831, collectors are competent to try all cases of resistance of their process of attachment connected with summary suits for rent, except where actual breaches of the peace occur, in which event the case must be tried by the magistrate. Const. No. 615.

SECTION XI.

OF REWARDS.

For the apprehension of offenders.

Applications to be made to officer appointed by government;

who is the superintendent of police L. P. ;—but the magistrate may offer rewards up to 500 rupees.

1267. All applications for permission to offer a reward for the apprehension of a known offender, or the discovery of unknown offenders in cases of magnitude, are to be made to such officer or officers as from time to time are empowered by the local governments to authorize the grant of rewards. Act XVI. 1843.

1268. The superintendent of police in the lower provinces is authorized, under the above rule, to sanction rewards for such objects to the extent of 500 rupees. The magistrate may exercise his discretion in offering rewards up to that amount; but he is to report them immediately to the superintendent of police, who may ratify, amend, or annul such orders as he thinks fit. C. O. Sup. Pol. L. P. No. 24 of 1843.

Particulars to be noted and forwarded with such application.

1269. In submitting such applications, magistrates are to forward copies of their proceedings, or such parts of them as are sufficient to show the grounds and evidence on which the person, for whose apprehension a reward is proposed, is considered to have been concerned in the commission of the offence. He is also to forward a descriptive roll containing the name of the person and of his father; his age; places of birth and residence; and a description of his person, as far as it can be obtained, particularly noticing any peculiarities of dialect, speech, gait, or vision. C. O. No. 147 of vol. 1. C. O. Sup. Pol. L. P. No. 2 of 1842.

Officers not to exceed their powers.

1270. All officers are to be careful not to exceed the power vested in them as regards the offer of rewards for apprehension. C. O. No. 173 of vol. 2.

Rewards are payable by the magistrate of the jurisdiction in which the offender is apprehended.

1271. All rewards for the apprehension of proclaimed offenders, which are sanctioned by the regulations, and promulgated under the seal and signature of a magistrate, or of the superintendent of police, are, if the offender be seized by officers of police or by other persons, to be payable on the delivery of the person proclaimed to the magistrate of the zillah in which the offender has been seized. Reg. XX. 1817. sect. 26, cl. 15.

Payment to be made at once, and reported.

1272. Rewards after they have been sanctioned, are to be paid without delay, and without further reference to the superintendent of police; but the payment is to be notified, whether the reward was offered on the authority of the magistrate or of the superintendent of police. C. O. Sup. Pol. L. P. Nos. 3 and 5 of 1842.

Quarterly statement.

1273. A quarterly statement of rewards and contingent charges disbursed under the sanction of the superintendent of police is to be furnished by the magistrates in the form, No. 9 of appendix F. C. O. Sup. Pol. L. P. No. 6 of 1842.

For meritorious service.

Authority of session judge to grant rewards for meritorious services in the apprehension or discovery of offenders, and of the nizamut adawlut.

1274. In cases wherein any meritorious service has been rendered by police officers or others in the apprehension or discovery of public offenders for whom no specific reward is payable to such persons, the session judge[a] on due consideration of the service rendered, the exertions made, and any expense incurred, in the performance of it, is authorized to direct the payment of such remuneration as is considered adequate, not exceeding the sum of 100 rupees for a sirdar, and 10 rupees for an accomplice. If a larger reward is deemed proper, a report of the case is to be made to the nizamut adawlut, who are authorized to direct the payment of any sum not exceeding 500 rupees: if in any case it appears proper to grant a higher reward or compensation than 500 rupees, the nizamut adawlut is to report the same for the consideration and orders of government. Reg. XVI. 1810. sect. 18.

The above is not applicable to vagrants.

1275. The above provision is applicable to any meritorious service rendered in the discovery and apprehension of persons really notorious as robbers; but is not to be considered applicable to persons coming under the vague description of "vagrants." C. O. No. 80 of vol. 1, para. 13.

Magistrate how to proceed when he considers any person deserving of reward for meritorious conduct; and power of superintendent of police.

1276. When a magistrate is of opinion that it is expedient to grant any reward to a police officer or other person for particularly meritorious conduct, or for any services rendered to the police; he is to state the circumstances with his sentiments to the superintendent of police, who may, if he deems it expedient, sanction such reward; provided that the sanction of government is previously obtained, if the proposed sum exceeds 100 rupees. But this rule is not to be construed to preclude the courts of session and nizamut adawlut from the exercise of the powers vested in them by the above provisions, whenever, from any circumstances which appear in the progress of a trial, they consider it expedient to direct or recommend the payment of any reward. Reg. XVII. 1816. sect. 15.

Economy inculcated.

1277. Magistrates are to regard economy in recommending rewards for meritorious conduct; and in any particular case a report should be previously made to the superintendent of police. C. O. Sup. Pol. L. P. No. 13 of 1842.

For recovery of stolen property.

Police officers are entitled to a commission of 10 per cent. on all they recover.

1278. Darogahs and other police officers are entitled to a commission of ten per cent. on the value of all property stolen or plundered, which they recover. The commission is to be paid by the owners of the property, which is to be fairly valued by the magistrate, or by any creditable and competent person, whom he may appoint for that purpose. The magistrate is to cause the commission, in the case above directed, to be paid by the owner or his agent to the police officers to whom it is due; and, if necessary, may cause a part of the property to be disposed of by public sale for the purpose of making good the amount. Reg. XX. 1817. sect. 16, cl. 17.

(a) The original refers of course to courts of circuit; but the same power has devolved successively on the commissioner of circuit, and the session judge. See para. 731. The text has been altered throughout accordingly; but it is prominently noted in this place, because it was thought necessary to explain in a circular order the power of a session judge to grant rewards under the above provisions. See C. O. No. 121 of vol. 2, dated October 5, 1832.

Power of session judge to order payment of per-centage.

1279. It is competent to a session judge to issue orders for the payment to police officers of the commission on the value of stolen property recovered by them, which is authorized by the above provision. Const. Nos. 727, and 1136.

None but police officers are entitled to the per-centage.

1280. Individuals, not being police officers, are not entitled to the commission allowed to police officers on the recovery of stolen property; but the magistrate may reward them for any eminent service rendered to the police, the necessary sanction being obtained from the proper authority.(a) Const. No. 381.

CHAPTER V.

OF APPEALS.

SECTION I.

OF APPEALS AND REVISION OF SENTENCES.

To whom appeals lie.

From assistants not vested with special powers to magistrate within one month;

from magistrate and officers vested with special powers to session judge within one month;

from session judge to nizamut adawlut within three months.

Such appeals are final.

1281. From every sentence or order in criminal trials within the limitation prescribed by sections 8 and 9, Reg. IX. 1793 (*Ced. Prov.* sections 8 and 9, Reg. VI. 1803)(b) or in judicial proceedings other than criminal trials, passed by an assistant to a magistrate, or by a sudder ameen, or by a law officer, or by any other officer under a magistrate empowered to try criminal cases, there is permitted one appeal to the magistrate, joint magistrate, or officer exercising the powers of magistrate, within one month from the date of such sentence or order.—And from every sentence or order in criminal trials beyond such limitation(b), or in judicial proceedings other than criminal trials, passed by a magistrate, joint magistrate, assistant to a magistrate or other officer empowered to try criminal cases, vested with special powers, there is permitted within one month as aforesaid one appeal to the session judge.—And from every sentence or order passed in criminal trials by a session judge there is permitted within three months one appeal to the nizamut adawlut.—And except as provided in the next section of this Act the sentences or orders passed upon such appeals are final. Act XXXI. 1841. sect. 2.

(a) In Const. No. 511 it was ruled that a *cutwal* was not entitled to a per-centage, under the above enactment, on a sum of 26000 rupees found by him in searching certain houses; but, as a *cutwal* is manifestly a police officer, it would appear that there was some peculiarity in the case in question that is not mentioned in the printed construction.

(b) The limitations are: *in petty offences*, imprisonment for 15 days, *or* a fine of 50 rupees, unless the offender is a zemindar, independent talookdar, or other actual proprietor of land paying an annual rent to government of more than 10,000 rupees; or a proprietor of ayma land paying a quit-rent to government exceeding 500 rupees per annum; or of lakhiraj land the annual produce of which is above 1000 rupees; in which cases the fine may be 200 rupees:—*in petty thefts*, imprisonment for one month.

EXPLANATIONS.

1282. Every order of an assistant to a magistrate or other officer not vested with special powers, passed in a criminal trial or proceeding, awarding a higher punishment than that prescribed by the limitations above mentioned (i. e. adjudging a penalty of fine *and* imprisonment agreeably to the provisions of sect. 20, Reg. IX. 1807,* or cl. 3, sect. 3, Reg. III. 1821†) is appealable to the session judge. C. O. Nos. 156 and 159 of vol. 3.

If order of officer not vested with special powers is beyond the limitations.

* *v.* ¶ 567.
† *v.* ¶ 613.

1283. Every sentence or order of an assistant or other officer vested with special powers, passed in a criminal trial or judicial proceeding, awarding a punishment within the limitations noted above, is appealable to the magistrate, joint magistrate, or officer exercising the powers of a magistrate. C. O. No. 210 of vol. 3.

If order of officer vested with special powers is within the limitation.

1284. The law allows no appeal to the session judge from the sentence of a magistrate, joint magistrate, [or other officer exercising the full powers of a magistrate] awarding a punishment within the limitations prescribed above. C. O. No. 100 of vol. 3.

If order of officer exercising full powers of magistrate is within the limitations.

1285. The magistrate is the authority to determine the character of the offence, and the measure of punishment deemed commensurate thereto; and consequently no appeal lies to the session judge when the magistrate treats a case as a petty offence, and passes sentence within the prescribed limitations, although a much more severe penalty might be inflicted under the regulations. Const. No. 1353.

It rests with the magistrate to determine what offences should be punished within the limitations.

1286. The order of a magistrate inflicting a fine not exceeding 200 rupees, under the express condition specified in sect. 8, Reg. IX. 1793,* is not appealable; but it is incumbent on the magistrate, in passing an order for a fine of above 50 rupees under that enactment, to set forth that the person fined is in the condition mentioned; and, in the absence of any such declaration on the part of the magistrate, any order of his directing the payment of a fine above 50 rupees is *primâ facie* appealable. Const. No. 1361.

If the magistrate fines a person more than 50 rupees within the limitation, he is to declare the condition which makes it such.

* *See note (b) in preceding page.*

1287. All appeals from a joint magistrate, of whatever powers (whether dependant or independant), are appealable exclusively to the session judge. Const. No. 858 is therefore rescinded. Const. No. 1326.

From *all* joint magistrates the appeal lies to the session judge.

1288. An order passed by a magistrate to prevent persons going about at night after a fixed hour, is appealable to the session judge. Const. No. 1239. The appeal from an illegal order of a magistrate, requiring a zemindar to provide a building for the residence of police officers stationed upon his estate, lies to the session judge. Const. No. 1247. [These constructions were ruled under the provisions of sect. 5, Act XXIV. 1837, which (by another construction, No. 1145) was declared to be in force in those districts in which the whole administration of criminal justice had been transferred under Act VII. 1835 from the commissioners to the session judges, whether a superintendent of police had been appointed or not. Under that section (as now under Act XXXI. 1841) all appeals from the orders passed by a magistrate in any judicial proceeding whatever were made cognizable by the session judge instead of the commissioner of circuit; and it is expressly enacted (by sect. 7) that nothing in Act XXXI. 1841 is to be held to alter or interfere with the powers and duties of a superintendent of police as laid down in Act XXIV. 1837, and other parts of the Bengal Code. So, it was ruled in Const. No. 1307, that appeals from the orders of a magistrate enforcing penalties, under cl. 5, sect. 10, Reg. XX. 1817, against landholders for not keeping up dak establishments, lie to the session judge, and not to the superintendent

In matters regarding the administration of police.

of police. And so, it has been ruled more lately, since the enactment of Act XXXI. 1841, in C. O. No. 157 of vol. 3, that all orders passed by magistrates for the removal of obstructions and nuisances on thoroughfares, or for other conservancy purposes, under the provisions of Act XXI. 1841, are appealable to the session judges only. In fine, therefore, all orders passed by a magistrate in judicial proceedings (other than criminal trials) whether connected with matters of police, or otherwise, are appealable to the session judge, with certain exceptions; viz. it is not competent to a session judge to interfere with any order passed by a magistrate regarding the appointment, suspension, or removal of any ministerial or police officer, the revision of which is entrusted to the superintendent of police (see sect. 5, Act XXIV. 1837): and so, as the magistrate's acts in the management of ferries are subject to the control of the superintendent of police, it is not competent to a session judge to receive appeals in such matters (Const. No. 1144).]

Jurisdiction.

1289. The appeal from the order of one magistrate, attaching lands in his district on the requisition of another magistrate, lies to the session judge to whom the former is subordinate. Const. No. 625.

General rules.

Appeal cannot be decided without calling for and examining the proceedings.

1290. As every convicted offender has, under the above enactment, the privilege of demanding a re-hearing of his case, or in other words a second trial, so the mere reception of a petition cannot be considered equivalent to the "appeal permitted" by the Act; but it is incumbent on the appellate authorities to call for, and examine the proceedings of the lower courts in every case, whether it be a criminal trial, or a judicial proceeding other than a criminal trial, from the sentence or final order in which an appeal is preferred to them. C. O. No. 165 of vol. 3.

Must be preferred within one month.

1291. Under the above provisions appeals are not admissible unless preferred within one month from the date of sentence or order: in this respect the law leaves no discretion. Const. No. 1332.

Rule for calculating the period.

1292. The month, within which the appeal must be lodged, is to be reckoned, exclusive of the day on which the order was passed, according to the English calendar, that is to say, it should not be invariably reckoned at 30 days. C. O. No. 158 of vol. 3.

Petitions forwarded by dak need not be attended to.

1293. Although a session judge is at liberty to call for the proceedings of a magistrate in any case, from whatever source his information has been derived, whenever such measure appears to him necessary for the ends of justice, yet a party is not entitled to have his petition of appeal attended to unless presented by himself in person, or by his representative duly authorized. Const. No. 513.

But petitions of appeal are to be received by officers against their own orders for transmission to the appellate authorities.

Judge what to note in margin of letter transmitting such.

1294. Magisterial authorities, and particularly those of out-stations, are to receive petitions of appeal against their sentences and orders for transmission to the session judge, if presented within the period of appeal; and session judges are to pass orders on such petitions, notwithstanding the appellant has not entered appearance by himself or through an accredited mokhtar at the court. The same rule is applicable to petitions of appeal from the sentences and orders of the session judges, presented to them for transmission to the nizamut adawlut: and the judges are to enter in the margins of the letters, with which they transmit such petitions, the dates of the sentence appealed from and of the presentation of the petition. C. O. Nos. 137, and 172 of vol. 3.

1295. During the absence of the session judge of Nuddea from his station on circuit duty, the nizamut adawlut, on petition, directed the magistrate to stay execution of his award, passed under Act IV. 1840, until the return of the session judge should enable the petitioner to prefer his appeal as allowed by law. *Sevestre's Reports*, vol. 2, page 153.

In a particular case, the nizamut adawlut received an appeal from an order of a magistrate.

1296. It is not required by any law that an appeal from the order of a magistrate should be accompanied by a copy of the proceeding or decision appealed from. Const. No. 1081.

Petition of appeal need not be accompanied by copy of order.

1297. It is not incumbent on the appellate authorities to furnish the lower courts with copies of the petitions of appeal presented against their proceedings; and on some occasions substantial reasons may exist for withholding them. N. A. R. vol. 2, page 221.

Appellate authorities need not furnish the lower courts with copies of petitions of appeal.

1298. The words "sentence or order" in Act XXXI. 1841 do not refer to interlocutory orders in cases under trial; and the provisions of the Act do not preclude the interference of the higher with such intermediate orders of the lower courts. Const. No. 1322.

Interlocutory orders.

1299. Session judges are competent to exercise interference in regular criminal trials in the course of their investigation before the lower courts, and to take cognizance of appeals from interlocutory orders passed by those courts in such cases, not having reference to matters of police: and it is absolutely necessary that they should have such authority to enable them to maintain an efficient superintendence and control over the whole of the proceedings of the lower courts in regular criminal trials. C. O. No. 226 of vol. 2.

General power of session judge to interfere in the course of trial by magistrate, and to take up appeals from interlocutory orders.

1300. As a magistrate's order in cases of trespass, or the like, may include the infliction of a fine of 50 rupees, not appealable under the above provisions, as well as an award of possession of the thing in dispute, which is appealable to the superior court; distinct and separate orders are to be passed in such cases, that in which the magistrate's decision is final being kept apart from any order appealable to the sessions court. C. O. No. 135 of vol. 3.

Two orders in one case, one appealable, the other not, are to be kept distinct and separate.

1301. Supposing a party to appeal, the amount of whose punishment clearly gives him that right, the session judge cannot interfere with another sentence in the same case, which falls within the limitations prescribed. And if a party, having an undoubted right to appeal, fails or neglects to do so, another party in the same case, whose punishment falls within the limitations specified, cannot be permitted to appeal. Const. No. 1330.

In such case the judge, though he annuls the former, cannot interfere with the latter.

Persons sentenced under the latter cannot interfere with the former.

1302. It is a rule of practice with the court of nizamut adawlut in the western provinces, not to receive petitions from third parties, calling themselves relations of the prisoners, without authority from the real appellants. No appeal therefore is considered admissible, unless presented by the appellant in person, or by a duly authorized representative. C. O. No. 166 of vol. 3.

The western court will not receive petitions of appeal from third parties.

1303. A person evading execution of a magistrate's sentence is not thereby debarred his right of appeal, and the appellate court is competent to suspend execution of the magistrate's sentence pending the appeal. Const. No. 941.

Evasion of process does not bar right of appeal.

1304. A session judge is at all times competent to direct a magistrate to suspend execution of his order, and to admit a prisoner to bail until a final order has been passed in the case, when justice appears to require the measure, whether he has or has not examined the proceedings on which the order is founded. Const. Nos. 489, and 657.

Judge may order magistrate to admit a prisoner to bail pending appeal;

or to admit a party to plead by vakeel;

1305. A session judge may direct a magistrate to admit a party to appear and answer by attorney, if he see sufficient reason, without calling for the proceedings. Const. No. 730.

and to replace on the file a case struck off on default.

1306. It is competent to the session judge, on sufficient grounds, to order the magistrate to replace on his file a case dismissed by him on default, or struck off without investigation of the merits in consequence of the plaintiff failing to attend or neglecting to prosecute his complaint. Const. No. 1169.

Appellate authorities ought not to communicate with appellants by letter.

1307. A session judge should not communicate by letter with a party appealing from the order of a magistrate, nor furnish him with copies of the magistrate's explanations: he should require the appellant to make his application on stamped paper; and, after calling on the magistrate for any explanation of his proceedings which appear necessary, proceed to determine the question at issue; leaving the appellant to apply in the usual manner for copies of any papers he may wish to have. Const. No. 818.

Power to punish malicious, &c. appeals.

* *v. paras.* 267 *et seq.*

1308. The session judge may exercise the same power in punishing malicious, vexatious, or groundless appeals, as is vested in the magistrates* in regard to complaints of that nature. Const. No. 530.

Merely litigious appeal is not punishable.

1309. A merely litigious appeal is not punishable; but if a prosecutor, whose case has been dismissed, persists in bringing before the appellate authority a charge evidently malicious or greatly exaggerated, it is competent to the latter to punish him as for such complaint. Const. No. 1208.

Appellants may employ any one to conduct their appeals.

1310. Appellants from the decisions of magistrates are at liberty to employ whom they please to conduct their appeals. But agents so employed should secure their remuneration before undertaking the business, and should be given to understand that no assistance to enforce payment of it afterwards will be given. Const. No. 642.

Officers cannot appeal from orders reversing their decisions.

1311. A sudder ameen is not entitled to appeal from the decision of a magistrate in a case originally decided by the former, the right of appeal possessed by the dissatisfied party being sufficient for the ends of justice. Const. No. 1185.

Explanations of appeals pending above 3 months.

1312. Explanations are to be given, in the periodical statements, of all appeals which at the close of the month or year have been pending above three months. C. O. No. 209 of vol. 2.

Revision of cases.

Nizamut may always call for cases.

1313. It is at all times lawful for the courts of nizamut adawlut to call for the records of any criminal trials of any subordinate court, and to pass upon them such orders as may seem fit.(a) Act XXXI. 1841. sect. 3.

But no court can enhance punishment on appeal.

1314. But it is not lawful for the court of nizamut adawlut in cases so called for, or for any criminal court in appeals preferred to it, to enhance the punishment awarded, or to punish any person acquitted by the court below. Act XXXI. 1841. sect. 4.

If case is not sufficiently investigated, judge may order further inquiry.

1315. Whenever it appears to a session judge, from the returns furnished to him by the magistrate, that any case has not been sufficiently investigated, and that a further enquiry is practicable and requisite for the ends of justice, he is in the first instance to direct such additional enquiry to be made by the magistrate. Reg. IX. 1807. sect. 22.

(a) The power of the nizamut adawlut to call for and revise trials is given more at large in page 183, paras. 998 *et seq.*

1316. The existing regulations give no power to a session judge to receive evidence, which has not been previously heard before the lower court, except in such cases as have been regularly committed to him for trial at the sessions. Any further enquiry, therefore, which he considers requisite under the above provisions, is to be instituted by the magistrate who is to communicate the result thereof to the session judge. Const. Nos. 1104, and 1169.

But such inquiry must be conducted by magistrate.

1317. On inspection of the periodical returns furnished by the magistrate of cases pending, the session judge is to call for the magistrate's proceedings in any case that may appear to require it; and if, on perusal of them, he is of opinion that there is not sufficient reason for postponing the trial, he is empowered to instruct him to close his proceedings; and either to pass a final order if the case is determinable by the magistrate; or to bring it before the sessions, if there appear to be sufficient grounds for committing the prisoner to stand his trial. Reg. VI. 1818. sect. 2, cl. 1.

Judge may call for proceedings of pending trial, and instruct the magistrate to bring it to a conclusion;

1318. In exercising the power vested in them by the above clause for the purpose of preventing the long confinement of prisoners charged with criminal offences during the magistrate's investigation, without strong and sufficient cause for their detention, the session judges are required to give due attention to the reasons assigned by the magistrate for not passing a final order respecting the prisoners in each instance, and to be careful that their instructions to the magistrate in such cases are consistent with the objects of public justice, as well as with a just and humane consideration of the prisoner's actual condition, and the period of his confinement. Reg. VI. 1818. sect. 2, cl. 2.

but in such case he is to pay attention to the reasons assigned by magistrate for delay.

1319. It is at all times lawful for a session judge and for a magistrate, joint magistrate, or officer exercising the powers of magistrate, to call for and examine the records of any court immediately subordinate to their respective courts, for the purpose of satisfying themselves as to the regularity of the proceedings of such subordinate courts: but it is not lawful for any court under the degree of the nizamut adawlut to alter any sentence or order of any subordinate court, except upon appeal by parties concerned duly made according to the provisions of this Act. Act XXXI. 1841. sect. 5.

Judge and magistrate may call for cases of subordinate courts; but cannot alter any order except on appeal by parties concerned.

1320. Under the above provision, it is the duty of the session judge and magistrate to report any cases, the circumstances of which, on revision, suggest the propriety of interference to the nizamut adawlut, in order that that court may proceed respecting them as appears proper. Such reports are always to be accompanied by the record of the case, to which the reference relates, and by an English letter commencing "Under section 5, Act XXXI. 1841, and circular order of the nizamut adawlut, dated 18th March 1842, I herewith transmit the record of the case, noted in the margin, to be laid before the nizamut adawlut, with the following report." Hereafter is to follow a concise account of the irregularity or other matter on which the interference of the court is sought. The magisterial authorities are to send these reports, for submission to the court, through the office of the session judge to whom they are subordinate. The court did not think it necessary to define what descriptions of grave irregularity of procedure, undue severity of punishment, &c., would call for reports of this nature; but enjoin on all officers the exercise of a sound discretion in making such references, so that neither important errors and omissions may escape correction, nor the time of the court be needlessly engrossed by matters not demanding their interference. C. O. No. 106 of vol. 3.

Duty of judge and magistrate under the above rule

Mode of reference to the nizamut adawlut.

Magistrate to submit cases through judge.

Higher courts may call for cases without reference to the source of their information;

1321. Although no person has a right of appeal to the session judge after the expiration of one month from the date of the magistrate's order, yet the judge is not only competent but it is his duty to send for any case, in which he may see reason to presume a failure of justice though no appeal has been preferred to him, and without any reference to the source from whence his information is derived. Const. Nos. 437, and 986.

or to the time which has elapsed.

1322. The period of appeal is limited merely as it relates to appellants without restricting the discretionary authority of supervision possessed by the superior courts. N. A. R. vol. 2, page 221.

In special cases judge may require English report of case from magistrate.

1323. In ordinary cases when an appeal is lodged against an act of a magistrate, the session judge should confine himself to calling for the proceedings in the case, or for a vernacular kyfeeut or report if such appears necessary; but in special cases he is fully competent, in his capacity of general control, to require a report in English on any particular points which appear to call for explanation, especially in regard to any irregularities or other defects apparent in the magistrate's proceedings. Const. No. 1071.

Session judge may inspect the English correspondence of magistrate's office.

1324. The magistrate is to comply with any application from the session judge to inspect the English correspondence of his office, whether with reference to any particular foujdaree case pending before him, or for the general purpose of acquainting himself with all official matters connected with the welfare and management of the district. C. O. No. 5 of vol. 2.

In forwarding explanations, the higher court is to give opinion.

1325. Officers forwarding explanations of their subordinates, are invariably to state whether they consider the same to be sufficient and satisfactory or otherwise. C. O. No. 219 of vol. 2.

SECTION II.

OF DIFFERENCE OF OPINION BETWEEN JUDGE AND MAGISTRATE.

Mode of procedure if magistrate thinks an order of the session judge unwarranted by or contrary to the regulations.

1326. Whenever it appears to a magistrate that a precept issued to him by a session judge is contrary to, or unwarranted by the existing regulations, he is authorized to state to the judge in what respects he considers his precept to be in deviation from the regulations, and to suspend execution till receipt of a second precept in reply to his objections. But if the second precept of the session judge, in reply to such objections, confirms his first precept in whole or in part, and requires the magistrate to execute the same without further reference, he is immediately to comply with such requisition. In case however the second precept does not satisfy the magistrate that the regulations have been rightly construed by the session judge, he is at liberty at the same time that he certifies the execution of the order to request the session judge to transmit copies of the precepts, and his returns thereto, with such other papers as are necessary for the information of the circumstances of the case, to the nizamut adawlut; and the judge is accordingly to transmit such papers, as requested, without any

unnecessary delay. Provided, nevertheless, that this is not to be understood to authorize any magistrate to question the propriety of any order issued by a session judge in cases clearly left to his discretion and judgment by the regulations; the reference to him, and eventually to the nizamut adawlut, meant to be authorized by this regulation, being confined to cases in which the sense of the regulations, from a difference of construction or otherwise, appears doubtful and uncertain. *Beng. and Ben.* Reg. X. 1796. sect. 2. *Ced. Prov.* Reg. XXII. 1803. sect. 2.

But the rules apply only to a difference of opinion as to the construction of the regulations;

1327. A magistrate is competent, under the above provisions, to require a reference to the nizamut adawlut, when he deems any order passed by a session judge in miscellaneous matters to be repugnant to the regulations; but he is not competent to offer any objections to a final order or decree, the remedy against which consists in an appeal by one of the parties interested. Const. Nos. 390, and 479.

and does not authorize the magistrate to offer objections to a final order.

1328. A magistrate cannot demand a reference to the nizamut adawlut on the plea that an appeal from his decision has been admitted by the judge on other grounds than those authorized by the regulations, as by so doing he would place himself in the light of an advocate of one of the parties. Const. No. 536.

Magistrate cannot object to the admission of an appeal.

1329. A magistrate referred a case to the nizamut adawlut, in which the court of circuit released certain prisoners on the ground that the evidence was in their judgment insufficient for conviction; but was informed that his reference was not agreeable to the intent of the above provisions, inasmuch as it was clearly competent to that court to annul his order on such ground, and that they were therefore authorized to decline forwarding the reference. Const. No. 433.

Judge may refuse to forward reference, if the order objected to depended upon his discretion and judgment.

1330. A magistrate was informed that his neglect to obey the order of the session judge, until it had been repeated three times, was irregular and unwarranted by the above or any other regulation. Const. No. 437.

Magistrate cannot refuse to obey a second order.

1331. A magistrate, having determined to refer a disputed point to the nizamut adawlut, should not decide the case out of which the point has arisen, until again directed to do so by the session judge to whose order he objects. Const. No. 1030.

But, if he objects, should not obey it till then.

1332. All discussions regarding the relative powers of the European officers, or animadversions upon points of a general nature, not immediately connected with the trial and decision of any case, should as far as possible be kept distinct from the judicial proceedings, and conducted in the English language. C. O. S. D. A. No. 26, April 18, 1811.

Such discussions should generally be conducted in English.

1333. In making references to the nizamut adawlut, copies are to be transmitted instead of original papers, unless the officer referring thinks it more proper to send originals, in which case he is to prepare copies for record in his office before submitting the originals. C. O. No. 126 of vol. 2.

Papers are not to be sent in original to the nizamut adawlut.

1334. Whenever any proceedings in miscellaneous cases are referred to the nizamut adawlut for their opinion, orders, or information, the papers in the native languages should be accompanied by an English letter specifying briefly the contents (which should be corroborated and borne out by the papers accompanying it), and the particular point on which the orders of the court are required. C. O. No. 184 of vol. 2.

Papers are to be accompanied by an English letter.

Determination of sudder court is final.

1335. In all instances wherein a reference to the nizamut adawlut is made under the above provisions, the determination of such court is to be held final and conclusive. *Beng. and Ben.* Reg. X. 1796. sect. 3. *Ced. Prov.* Reg. XXII. 1803. sect. 3.

How the nizamut adawlut is to proceed if in doubt.

1336 If any doubt occurs to the nizamut adawlut with respect to the meaning of any part of the regulations; or if it appears to them, on the occasion of any reference, that the regulations do not sufficiently provide for the case submitted to their decision; they are in the former case to report the circumstances of it to government, that a new regulation may be framed in explanation of such doubt; and in the latter case are to propose a new regulation. *Beng. and Ben.* Reg. X. 1796. sect. 4. *Ced. Prov.* Reg. XXII. 1803. sect. 4.

Copy of certain correspondence between judge and magistrate to be sent to nizamut.

1337. A copy of any correspondence passing between the session judge and magistrate, which discusses matters relating to the state of the district, or the mode of conducting business in the magistrate's office, is to be sent by the judge to the nizamut adawlut. C. O. No. 277 of vol. 1.

CHAPTER VI.

OF RULES OF OFFICE.

SECTION I.

OF THE CUTCHERRY AND OFFICIAL PROCEEDINGS.

Cutcherry.

Letter to nizamut on delivering charge of office.

1338. An officer delivering over charge of his office is to state in his letter to the nizamut adawlut the authority for so doing, the date of the order under which he acts, and the nature of the power vested in the relieving officer. C. O. No. 157 of vol. 2.

List of unanswered letters to be furnished to successor:

1339. An officer delivering over charge is to furnish the officer who relieves him with a list of all unanswered letters, and of all periodical reports and statements, which, having become due, have not been forwarded. Periodical reports and statements are considered as due immediately on the expiration of the period to which they relate. C. O. No. 179 of vol. 2.

and minute to be recorded by the vacating officer of his opinions of subordinate officers.

1340. Session judges and magistrates are invariably, prior to delivering over charge of their offices on quitting a district, to record a minute to be made over to their successor, containing their sentiments and opinions on the administration of those subordinate to them up to the period of their quitting the office of control, as well as any other observations, or results of experience, which they deem necessary or useful. C. O. No. 103 of vol. 3.

1341. An officer, who holds the offices of collector and magistrate, will not be exonerated from the responsibility, which attaches to the latter office, by urging in extenuation of mal-administration that the criminal duties were intrusted to the joint magistrate. C. O. No. 103 of vol. 3.

Responsibility of officers.

1342. Magistrates and other judicial officers are to be careful that no more holidays are allowed than those specified in the court's orders (C. O. S. D. A. No. 52, April 6, 1816), which are indispensable under the obligation of religious observances.(a) C. O. No. 50 of vol. 2.

Holidays.

1343. The trial of such cases as have been committed and are ready for trial previous to the commencement of the vacation should be completed, although the vacation supervenes in the course of it. And the court of the session judge is never to be closed, during the dusserah and mohurrum vacations, for the despatch of criminal business, except on those days only when a total cessation from all business is necessary and usual. C. O. No. 141 of vol. 2; and No. 8 of vol. 3.

Sessions court during the vacations.

1344. Applications for leave of absence are to be addressed by the session judge direct to the judicial secretary to government. C. O. No. 134 of vol. 3.

Leave of absence.

1345. No persons, except the guards on duty, are to be allowed to wear arms within the cutcherry. C. O. 172 of vol. 2.

Armed persons not allowed in cutcherry.

1346. The civil officer at the head of each cutcherry is to make some one person of the establishment answerable for the glass in each room, that person being liable to pay for any panes that may be broken, unless he informed his superior at the time, and either proved the fracture to have been unavoidable or produced the person who broke them. The mode of dealing with persons breaking panes is left to the sense and discretion of the officer at the head of the department. Glass is not to be used in the windows and doors of civil buildings nearer the floor than 3½ or 4 feet, by order of the military board. C. O. S. D. A. No. 35, May 31, 1839. C. O. No. 46 of vol. 3.

Care of glass windows in cutcherry.

1347. In reply to a question whether magistrates are allowed, under any circumstances, to transact the current business of their offices in their private dwellings, the nizamut adawlut thought it sufficient to observe that, when sitting as a criminal judge, the magistrate must sit in the established court house; at the same time they declined to enter upon the general question of the powers of a magistrate out of office. On another occasion the court held the practice of transacting public business in private residences to be objectionable, and accordingly interdicted it. Const. No. 645. C. O. No. 21 of vol 2.

The practice of transacting public business in private residences is objectionable.

1348. The nizamut adawlut quashed the proceedings in a case, in which the session judge held the trial of a prisoner in the jail on account of her approaching confinement; and directed that she should be tried *de novo* in the established court house, as soon as she should be sufficiently recovered. N. A. R. vol. 6, page 33.

Sessions must be held in the court house.

Correspondence.

1349. The letters dispatched from each office are to be numbered in one continued series from the commencement to the close of the year. All officers in their correspondence,

Letters are to be numbered in a

(a) It appears to be the present practice of the court to publish annually a list of the holidays to be allowed during the ensuing twelve months.

continued series; to be concise; and distinct on separate subjects.

as well with each other, as with their respective governments, are to write separate letters on separate subjects, and to annex to each letter a short abstract of its contents. Those letters which contain the most useful information and pertinent suggestions or instructions within the shortest compass are the most valuable, and will be held by the superior authorities in the highest estimation. C. O. No. 184 of vol. 2; and No. 72 of vol. 3. C. O. S. D. A. No. 20, July 2, 1830.

Quotations of letters received how to be made.

1350. Officers who have occasion to refer in their letters to any numbered paragraphs of letters received, are to state briefly in the margin the substance of the several paragraphs to which they so refer. Every letter should, as far as possible, be made intelligible in itself, without reference to any other document for the elucidation of its meaning. C. O. No. 150 of vol. 3.

Correspondence of, and with superintendent of police.

1351. Magistrates are to file separately the circulars and correspondence of the superintendent of police. When letters addressed to that officer require immediate attention, the word "immediate" or "urgent" is to be endorsed on the cover. C. O. Sup. Pol. L. P. Nos. 18 of 1838; and 2 of 1841.

Sealing wax not to be used.

1352. Sealing wax is not to be used for public dispatches; envelopes are to be closed with gum arabic; and the seal of office is to be stamped upon each in lamp-black. Govt. Notification, Aug. 17, 1842.

Address of native gentlemen.

1353. Officers are to be careful that native gentlemen, and particularly those of high rank, are addressed in all public documents in a courteous style suitable to their station in society. C. O. No. 95 of vol 3. C. O. Sup. Pol. L. P. No. 18 of 1841.

Records.

Record keepers to keep a register of all records;

1354. The record-keepers are to keep a register, in the vernacular, of all the proceedings, documents, and other records belonging to the court to which they are respectively attached, in a book, each leaf of which is to be attested by the officer presiding or his assistant, and on the last leaf of which he is to specify in his own hand-writing the number of pages contained in the book. *Beng.* Reg. XVIII. 1793. sect. 4. *Ced. Prov.* Reg. XIII. 1803. sect. 4.

and to endorse each paper with a reference to such register.

1355. The record-keepers are to endorse upon the back of every paper or document, which they enter in the register, the number of the page in which it is registered, and the endorsement is to be attested with their official signature. *Beng.* Reg. XVIII. 1793. sect. 5. *Ced. Prov.* Reg. XIII. 1803. sect. 5.

And to take care that the records are not destroyed, or removed;

1356. It is the duty of the keepers of the records to see that the records of the court are not destroyed by insects, damp, or otherwise, and that they are not removed without the orders of the court. *Beng.* Reg. XVIII. 1793. sect. 6. *Ced. Prov.* Reg. XIII. 1803. sect. 6.

under penalty of dismission.

1357. If any records entered in the register are destroyed in consequence of the neglect or any omission of the keeper of the records, or if any such records are not forthcoming and they are not able to give a satisfactory account of them, they are liable to dismission from office. *Beng.* Reg. XVIII. 1793. sect. 7. *Ced. Prov.* Reg. XIII. 1803. sect. 7.

Mutilation or removal of records punishable as forgery.

1358. The nizamut circulated a notification in the native languages, to be published in all offices, cautioning the native officers against making illegal alterations in or changing the public records, and pointing out that such offences are punishable as forgery under the provisions of Reg. II. 1807. C. O. No. 57 of vol. 1.

1359. Any officer who permits the records of his office to fall into disorder is to be held responsible to government for the expenses incurred in their re-adjustment; and any functionary receiving charge of an office, the records of which are in disorder or so immethodically arranged as to prevent the ready production of papers when called for, who fails to make a timely report of their state, is to be similarly held answerable for the outlay attending the assortment of the records. C. O. No. 122 of vol. 3.

Responsibility of officers to keep their records in order.

1360. As there is no specific provision in the regulations for compelling native officers of government to deliver over charge of the records of the office, such cases must be treated under the general regulations.(a) Const. No. 176.

Native officers may be compelled to deliver records.

1361. The revenue authorities are not entitled to demand that the records of cases should be sent to them for inspection: but they may depute an officer to examine such records with the permission of the court. Const. No. 693.

Revenue authorities cannot demand to see records.

1362. In 1831 the magistrates were authorized to destroy all the Persian records of their courts of a date prior to the 31st December, 1815, except the proceedings in cases of commitment for trial before the court of circuit, and any other records which they thought it necessary to preserve. So in 1835 the magistrates in the lower provinces were allowed to destroy the Persian records of their courts of a date prior to the 31st December 1820, with the same precautions: and those in the western provinces, who required more room in their record offices, were permitted to burn such papers in each case as were connected with the investigations of the police. C. O. Nos. 88, 180, and 182 of vol. 2.

Destruction of old records.

Copies.

1363. To prevent the specification of additional documents in applications for copies after their presentation and the passing of an order upon them, petitioners are to be required to mention in words the number of documents of which transcripts are required, and to insert the date of application immediately after the list of papers. C. O. No. 132 of vol. 3.

Applications for copies.

1364. When a deed has been once filed in court, it becomes a record, and a copy may be taken on the stamp prescribed for copies of records. Const. No. 428.

A deed once filed becomes a record.

1365. Minutes recorded by the judges of the sudder dewanny and nizamut adawlut on a question of general importance and submitted to government, are not to be considered as public documents; consequently, copies should not be granted to private individuals on their application. Const. No. 718.

Minutes of judges of the nizamut adawlut.

1366. Whenever applications are made for copies of any letters from or resolutions passed by the nizamut adawlut, the applicants are to be referred to that court. This rule does not apply to the sentences of the court in criminal trials; and in the western provinces, it is applicable only to copies of letters, resolutions, and other orders recorded in the English language. C. O. Nos. 160, 207, and 218 of vol. 3.

Letters from or resolutions passed by the nizamut adawlut.

1367. Individuals may make, for their private use and at their own expense, copies of judicial papers, with the permission of the court, on any paper which they prefer; but if such copies are not made on stampt paper, they are not to be authenticated by the seal or

Copies may be made by individuals at their own expense on unstamped paper.

(a) It is an offence under the Mahomedan law for a dismissed officer to retain possession of the records of his court, because they can in no case be considered as his property. See Hedaya, Book XX. Chap. 1. "Of the duties of the Kazee."

signature of any court or public officer, and are not to be received as evidence in any court of justice, or in any public office whatever. Reg. XXVI. 1814. sect. 16, cl. 4.

1368. The above provision has not been repealed by the subsequent stamp laws. Const. No. 408.

Persons, not officers of the court, may be employed in making copies.

1369. The prohibition contained in sect. 2. Reg. VIII. 1825, against the employment of others than the duly constituted officers of the court, need not be construed to preclude other persons than the regularly appointed officers of the court from taking copies of public documents, with the sanction of the officer presiding, for the use of private individuals, at the expense of those who employ them. Const. No. 407. Reg. III. 1829. sect. 6.

Proceedings.

Not to be headed by heathen deities.

1370. The names of the heathen deities are not to be prefixed to the proceedings or orders of the courts, or to any processes emanating therefrom. But this has no reference to petitions, documents, or papers of any kind, presented to the courts, in regard to which all interference is prohibited. C. O. No. 96 of vol. 3.

The vernacular substituted for the Persian language.

1371. Act XXIX. 1837 gave the governor general in council power, by an order in council, to dispense either generally, or within such local limits as should seem meet, with any provision of any regulation of the Bengal Code, which enjoins the use of the Persian language in any judicial proceedings or in any proceeding relating to the revenue, and to prescribe the language and character to be used in such proceedings: and also to delegate this power to any subordinate authority. Accordingly, such power having been delegated to the governor of Bengal, it was directed that, in the districts comprised in the Bengal division of the Presidency of Fort William, the vernacular language of those districts should be substituted for the Persian in judicial proceedings and in proceedings relating to the revenue. C. O. S. D. A. No. 3, February 9, 1838.

The Oordoo the language of the nizamut adawlut.

1372. The Oordoo language is the language of record in all proceedings and orders in the nizamut adawlut at the presidency, and it is to be written in the Persian character. In criminal trials referred to that court, with exception to trials for the crime of thuggee, all papers which are not drawn up in the Persian or Oordoo language, are to be accompanied by translations in the latter. In districts in which the Oordoo language is current, it is to be written in the Nagri character. In districts in which either the Oordoo or the Bengalee is the current language, parties are to be allowed to present all petitions and pleadings in any language they think most suitable to their purpose; but any document so presented, which is not written either in the Persian, Oordoo, or Bengalee, is to be accompanied by a translation in one of those three languages. The same rule is applicable to futwas and bewustahs required from the law officers. The authorities in the Bengal districts are to correspond with each other in the vernacular language, and to employ the Oordoo in their correspondence with the courts of other districts. The same rule is to be observed, *mutatis mutandis*, in Cuttack and the other provinces subject to the jurisdiction of the nizamut adawlut. C. O. S. D. A. No. 42, July 5, 1839. C. O. No. 112 of vol. 3.

To be written in the Nagri character.

Petitions, pleadings, and futwas.

Correspondence.

Style to be adopted in the use of Bengalee.

1373. In using the Bengalee language, the courts are to adopt a style equally removed from the colloquial and that employed by the pundits; officers are to pay particular attention to this subject, and to refer their amlah to the Bengalee version of the Regulations of 1793, in regard both to the style, and the terms which usually occur in legal proceedings. C. O. No. 84 of vol. 3.

The Hindoostanee to be substituted for the Persian in the western provinces.

1374. In the western provinces, the use of Persian in all criminal proceedings, petitions, and writings of what kind soever, is to be wholly discontinued, and the Hindoostanee to be adopted in its stead. In criminal trials referrible to the nizamut adawlut, Persian translations of evidence recorded in the vernacular need not be transmitted: but it is the duty of session judges to transmit all proceedings they refer to, or send up on a call of the court, written in a correct Oordoo style, and fair and legible character; and to require the magistrates, whenever uncommon words or obvious provincialisms occur in a record of evidence, to cause the mohurrir at the time of taking it down to enter in the margin the corresponding or equivalent term in Persian. The style used must be clear and idiomatic, and it is not sufficient merely to substitute a Hindoostanee for a Persian verb at the end of a sentence. C. O. No. 26 of vol. 3.

Correspondence with officers at Hazareebagh, &c.

1375. All proceedings addressed to the assistant to the governor general's agent stationed at Hazareebagh or Lohardugga, are to be written in the Oordoo language. C. O. S. D. A. No. 27, November 23, 1838.

Oordoo to be used in thuggee proceedings.

1376. The Oordoo Hindostanee, which is the language most universally prevalent throughout India, and with which even the thugs of lower Bengal must, from their wandering habits and practice of conversing with travellers from all parts of the country, be well acquainted, is to be used by all the officers employed in the investigation of charges for thuggee. C. O. No. 241 of vol. 2.

Language to be used in cases in which Europeans are concerned.

1377. All processes issued to an European defendant should be in the ordinary language of the court and in English. Such person filing his pleadings and petitions in the vernacular on the prescribed stamp may be permitted to add translations thereof in English on unstampt paper: but it is no part of the duty of the court to furnish him with translations; he must procure a person duly qualified to interpret for him. The deposition of an European witness must be recorded in English, and a vernacular translation made by the court and annexed thereto. Const. No. 1035.

Miscellaneous.

Mode of calculating the period allowed for any official act.

1378. When the period, within which an appeal should be lodged or any official act done, consists of days or weeks, the full number of days or weeks mentioned in the order is to be allowed, exclusive of the day on which the order is passed; and when a month or a year is mentioned, it should be reckoned according to the English calendar, that is to say, the month should not be invariably reckoned at thirty days, and the year should comprise twelve English calendar months. C. O. No. 158 of vol. 3.

References to the advocate general.

1379. All references which are made for the opinion of the advocate general on points of English law are to be submitted through the nizamut adawlut. C. O. No. 133 of vol. 3.

References regarding chemical questions to be made to the professor of chemistry, medical college;

1380. All references regarding chemical questions and operations on account of government, are to be made to the professor of chemistry, medical college, Fort William, who is privileged to issue and receive letters connected with his department free of postage. But uch references are to be limited to cases of urgent necessity, in which the local medical fficer cannot afford the required information, and to doubtful cases of poisoning, &c., egarding which there is need of information for directing the researches of the police.

who is not to be required to make affidavits before a magistrate.

Magistrates are not to call upon the chemical examiner to make affidavits before the chief magistrate of Calcutta, regarding any matter referred for examination, as such affidavits are not legal evidence. C. O. Nos. 110, and 146 of vol. 3.

Details of the case are to be forwarded with such reference.

1381. Officers forwarding to the examiner substances for chemical examination, are to furnish him with every detail that can be obtained both from the civil surgeon and those persons who depose to the facts of the case. C. O. No. 129 of vol. 3. C. O. Sup. Pol. L. P. No. 6 of 1843.

English stationery to be obtained by indent.

1382. No English stationery of any kind is to be charged for in contingent bills, as such articles are to be obtained by indent from the government stores under the control of the military board. C. O. No. 67 of vol. 3.

Indents for forms on the government lithographic press.

1383. No charge whatever is made for forms printed at the government lithographic press. Whenever an officer requires lithographic forms of any description, he is to apply direct to the superintendent of the government press for them, and not through the nizamut adawlut: but he is to indent for those forms only which have been approved of by the court. Such forms are kept in readiness; but, if it is inconvenient to wait for them, the statements are to be drawn out in precisely the same form as those issued from the court: and no alterations should, on any account, be made in any form directed by the court to be used, except with their express permission. C. O. Nos. 118, 136, para. 15, and 235 of vol. 2.

To be accompanied with specimens.

1384. Officers indenting on the government lithographic press for forms of statements, &c., are to forward to the superintendent, with their indents, a specimen of the smallest size of paper on which the forms may be executed without material inconvenience. C. O. No. 121, repeated in No. 169 of vol. 3.

Countersignature by civil officers of plans relating to public works.

1385. The countersignatures by civil officers of plans and other documents relating to public works, is not to be deemed as implying a tacit approbation or confirmation of the statements contained in the documents to which they are affixed. A separate heading is to be introduced in all documents requiring countersignature for the remarks, if any, of civil functionaries, and when they have none to make, for the simple record of the fact: but such papers are not to be detained unnecessarily; and for the purpose of ascertaining upon whom the blame of delay should rest, the executive engineers are to be required invariably to note the dates of dispatch, and civil officers those of receipt and return. C. O. No. 1, January 9th 1846, in Bengalee Gazette, page 120.

Magistrate to report delays in the repairs of public buildings.

1386. In the case of delays in the execution of repairs and alterations of public buildings, it is the duty of the magistrate, or other public officer to whose department the work belongs, to report the circumstances to government, in order that measures suitable to the exigency of the case may be taken. C. O. No. 253 of vol. 1.

Use of circuit houses.

1387. The superintendent of police, commissioners of revenue, [and executive officers when on duty at stations not their head quarters], are allowed to occupy the circuit houses when not required by officers holding criminal sessions. The session judge may also authorize the temporary occupation of those houses by persons employed on the public service, under the express condition that they uniformly vacate them when required for the above mentioned officers. This indulgence is not to be extended to persons wishing to occupy cutcherries or

any other public buildings in the judicial department, and the magistrates are strictly prohibited from allowing any individuals to occupy such buildings for their personal accommodation. On the occurrence of any extraordinary emergency which appears to warrant a temporary exception from this rule, the magistrates are to apply for the previous sanction of government through the session judge, explaining the cause of the emergency, and specifying the period for which the indulgence is solicited. C. O. No. 196 of vol. 1.

No more circuit houses to be built.

1388. It was determined by government in 1829 not to build circuit houses at stations, where they had not then been erected; and commissioners of circuit were directed to find their own accommodations at such places. C. O. No. 35 of vol. 2.

Documents and information obtained officially are not to be communicated to individuals without the consent of government.

1389. Documents and papers, which have come into the possession of officers officially, are in no case to be made public, or communicated to individuals without the previous consent of the government to which alone they belong. The officer in possession of such documents and papers can only legitimately use them for the furtherance of the public service in the discharge of his official duty; and it is to be understood that the same rule which applies to documents and papers, applies to information of which officers become possessed officially. Govt. Notification, August 30, 1843.

The superintendent of police will take notice of any infringement of this rule.

1390. The superintendent of police will, under the above notification, bring to the notice of the government all instances in which he concludes that information procured officially has been afforded to public journalists, or the editors of periodical publications, by the officers employed in the police or thuggee departments. C. O. Sup. Pol. L. P. No. 11 of 1844.

Public notifications to be sent to the vernacular gazettes.

1391. Public notifications of general importance should be sent for publication to the vernacular gazettes, as the best means of giving them a wide currency among the natives. C. O. S. D. A. November 19, 1841. (Bengalee Gazette, page 451.)

SECTION II.

OF STAMPS.

Stamps required on law papers.

1392. Duties on law papers are to be levied at the rates and in the manner prescribed in the following schedule B; and no papers are to be filed, exhibited, received, or admitted in any court of judicature, of the description stated in the schedule to require a stamp, unless the same is duly stamped. Reg. X. 1829. sect. 17.

Bail-bonds, mochulkas, security-bonds.

1393. Bail-bonds, mochulkas, recognizances, security bonds, *(hazir* or *fial zamin)*, whether of specified amount, or with a penalty of a specific sum of money, or of indefinite amount, when furnished and filed under special order of a court of justice, civil or criminal, or of any officer exercising judicial powers,—are to be charged as petitions to the court or authority ordering the same.—*Exemption.* Mochulkas taken on the release of prisoners from the foujdaree jail; and mochulkas and recognizances taken from prosecutors and witnesses to secure attendance at criminal trials. Reg. X. 1829. sched. B. art. 1.

Copies.

1394. Copies—of judicial proceedings, of accounts, statements, reports, or the like, filed on record and taken out for use or reference, or when left on proceedings in place of originals withdrawn—are to be charged per sheet, 8 annas. Each sheet is to be of a size not exceeding that fixed for copy paper (No. 3 of the stamp office), and is to be written on one side thereof only. Reg. X. 1829. sched. B. art. 3.

Both the application and the copy must be on stampt paper.

1395. Under the rules laid down in this schedule, both the applications for copies, and the copy itself, are to be on stamped paper; but the stamp assigned for the application is not in every case to be of the same value as that required for the copy. Const. No. 773.

Mokhtarnamahs.

1396. Mokhtarnamahs, wukalutnamahs, and other powers, required to be filed for the conduct of suits, or of proceedings of any kind, pending before the native courts of judicature —are to be charged as prescribed for petitions presented to those courts.—*Exemption.* Mokhtarnamahs executed by native officers and soldiers, belonging to the regular corps on the military establishment of the presidency of Fort William. Reg. X. 1829. sched. B. art. 6.

Petitions.

1397. Petitions, durkhasts, or applications, in relation to matters pending before the undermentioned authorities in their official capacities, when not otherwise specified or provided for in the schedule, are to be charged—if addressed to a magistrate or joint magistrate, per sheet, 8 annas;—if to a commissioner of circuit or session judge, one rupee;—if to the nizamut adawlut, per sheet, two rupees.—*Exemptions.* All charges and informations respecting crimes not bailable by the regulations. Petitions from prisoners, convicts, persons under examination, or otherwise in duress, or under restraint of the court or its officers. Petitions of appeal presented to magistrates against chowkeedary assessment. Communications made to magistrates in regard to police matters not intended for record. Reg. X. 1829, sched. B. art. 7.

How far petitions may be received on unstampt paper.

1398. Only such petitions on unstampt paper, as are allowed by the regulations, should be filed on record: and, as a general rule, petitions required to be presented on stampt paper should not be read, unless so presented; but the magistrates may exercise their discretion in particular cases, where sufficient reason appears for the petition not having been presented on the required stampt paper. Const. No. 247.

If the matter cannot be comprised in one sheet.

1399. When the whole matter of a petition of plaint or appeal cannot be comprised in a single sheet of stampt paper, the additional sheets need not be stampt paper. Const. No. 870.

How far prisoners may petition on unstampt paper.

1400. The above exemption in favor of persons under duress is to be construed to allow prisoners confined under civil process to petition on plain paper only in matters relating to their treatment in jail; and persons confined under criminal process, in matters relating to their treatment in jail, and the case in which they are confined. C. O. S. D. A. No. 17. May 28, 1830.

Razeenamahs.

1401. Razeenamahs, rufanamahs, sooluhnamahs, or the like, that is to say—any written application, whereby, or according whereunto a suit pending in a civil court is to be adjusted, or is capable of adjustment without argument in court, and award of the presiding judge, or other officer,—are to bear the stamp required for a pleading[a] in the court wherein it is filed. Reg. X. 1829. sched. B. art. 10.

(a) The only pleadings in criminal courts are petitions: the stamp therefore required in the magistrate's and inferior courts must be eight annas.

1402. Applications for the payment of money deposited in court must in every case be made on stampt paper as a record, unless a specific order has at the same time been passed for the payment of the amount. Const. No. 1093.

Applications for payment of money deposited in court.

1403. It is competent to judicial officers, subject of course to the control of the sudder court, to lay down as a rule of court, or of their respective cutcherries, the size and description of paper to be used for petitions, or for other documents and records of their offices, when there is no provision on the subject in the regulations for the department. Under this rule it is directed that the size No. 4 of the stamp office is to be that used for the purposes specified in the articles quoted above from schedule B. Reg. X. 1829. C. O. S. D. A. No. 56. August 10, 1832.

Size of stampt paper to be used under the above rules.

SECTION III.

OF ACCOUNTS.

General.

Rules for the examination and check of accounts.

1404. Magistrates should be careful to examine regularly the accounts kept by the treasurer; and should adopt rules similar to the following:—

First. No sums to be entered in any accounts except the office cash account; such practice being contrary to express orders from the Court of Directors. *Second.* The Bengalee ledger or *roakur bahy* to be signed by the magistrate, and never to be allowed to be in arrear more than one day. In this ledger every debit and credit to be entered under its appropriate head. *Third.* No payment to be made on account of diet to prisoners, salary, or any contingent charges, without an office receipt being taken; and such receipts to be written in a bound book and to be signed by the persons receiving the money. *Fourth.* A book to be kept at each thana and by the nazir, in which each sum sent by the police officers or nazir is to be entered, and the book sent for the acknowledgment of the treasurer, which is to be entered therein instead of a loose receipt being given. *Fifth.* At the end of each month the mohafiz, jail-darogah, treasurer, and nazir to compare the register of fines with the *roakur bahy*, and give a joint certificate that the fines have been realized, or the persons made over to the jailor for imprisonment. *Sixth.* The prescribed register of deposits to be kept in English by one of the writers; and the mohafiz to take his certificate of registry on every order for the receipt of a deposit. *Seventh.* The jailor to keep two books in a form prescribed by the magistrate; in one of which he is to enter all sums sent on account of jail manufactures, and in the other all other accounts; and the treasurer is to sign them by way of receipt in a column prepared for that purpose. The jailor is to compare the former with the work books and to bring to notice any discrepancy. *Eighth.* A separate detailed debit and credit account of salaries received and paid to be kept by the treasurer and signed by the magistrate every week.

Charges paid to contractor for dieting prisoners and contingent charges.

Forfeitures for trespass, and overplus for repair of thanas sent in by the police.

Fines in Court.

Proceeds of manufactures by convicts; money found in searching prisoners; &c.

Salaries.

These rules should be pasted on boards, and hung up in the magistrate's private room, the English office, and the treasury, so as to prevent their being lost sight of by a change of incumbents. C. O. Sup. Pol. L. P. No. 15 of 1842.

Money received on any account whatever is to be credited in the public accounts.

1405. The keeping out of the public accounts money received on any account whatever is highly objectionable, because it exposes the money to the risk of embezzlement without a chance of detection. All monies paid into government treasuries, how small soever the amounts, and whatever may be the account on which they are received, should be brought to credit under deposits, or other appropriate head of accounts: and if any of the receipts are of the nature of deposits, they should be retained so credited, until claimants appear and demand payment. C. O. Acc. Jud. Dep. No. 76, April 22, 1841.

Copies of all reports on embezzlements are to be sent to the accountant.

1406. Whenever an officer has to report upon an embezzlement occurring in his treasury, he is at the same time to send a copy of the report to the accountant to government for his information and guidance. C. O. Acc. Jud. Dep. No. 76½, October 31, 1841.

Sufficient vouchers must be sent with all accounts.

1407. Officers furnishing public accounts are to be careful to send sufficient vouchers for the charges inserted therein, all of which must be supported with proper authority. Bills for petty contingent disbursements must be countersigned by the controlling authority, previous to dispatch for audit. C. O. Acc. Jud. Dep. No. 38, June 1, 1826.

The early preparation and transmission of periodical accounts inculcated.

1408. The accountant to government is instructed to close the abstract of the judicial accounts on the 30th November, and the whole account on the 31st January of each official year; and to submit an explanatory report of the cause of delay in every instance in which those dates are not adhered to punctually. It is necessary therefore that all officers should pay particular attention to the early preparation and transmission of the periodical accounts. C. O. Sup. Pol. L. P. No. 12 of 1846.

Letters to the accountant how to be addressed.

1409. All letters and envelopes on matters connected with accounts and statements, &c., of the judicial department (including ferry funds and jail manufactures, &c.), which are to be communicated to the department of accounts at the Presidency, should be addressed to the Accountant to the Government of Bengal in the judicial department. C. O. Acc. No. 98. October 21, 1846.

Fixed establishment.

To enable the civil auditor to furnish government with a yearly return of establishments, the salary bill of each office is to remain unaudited until he is furnished with such return from it.

1410. The civil auditor is to furnish, by the 1st of August of each year, a book showing exclusively salaries and establishments on the 1st of May, arranged under proper heads; and within 3 months from that date he is to furnish as an appendix the explanations of increase and decrease; the monthly average of contingent charges; the detail of the marine contingencies; and the schedule of pensions and charitable allowances. To enable the civil auditor to conform strictly to this rule, the audit of the salary of each office for the month of April is to be made dependent on the receipt by the civil auditor of the detailed statement of salaries and establishment on the 1st of May from such office; and the civil auditor is to report to government the name of any officer who fails to send in the above statement of his establishment by the 15th of June following. Orders Govt. Bengal, September 7, 1842.

Form of return required.

1411. In furtherance of the above order, a detailed abstract of each establishment for the month of April is to be furnished annually, according to the forms, Nos. 1, 2, and 3 of appendix G. The particular authority for each item, whether of government, or otherwise as the case may be, is to be stated, as well as the date under which the orders have been carried into effect. C. O. Civil Auditor, March 3, 1845, (repeated annually).

Annual return of uncovenanted servants.

1412. Pursuant to the orders of the government of India, dated January 3, 1845, and the requisition of the Court of Directors dated November 6, No. 31 of 1844, an annual return is to be furnished to the civil auditor of all uncovenanted servants in the employ of government according to form No. 4 of appendix G. Europeans, and East Indians are to be distinguished from natives of India; and the detail of the latter is to be limited to deputy magistrates, and other officers of superior grade, omitting entirely mere subordinate ministerial officers, such as treasurers, clerks, &c., who exercise no control whatever over the establishments in which they are employed. The return is to be transmitted, as early as possible, for the 1st of May of each year (accompanied with separate alphabetical indices of English and native names) in order to be sent with the civil lists which are forwarded to the Court of Directors early in July. C. O. Civil Auditor, No. 261, February 25, 1845; and No. 420, March 27, 1845.

No salaries are to be paid until the bills are returned duly audited.

1413. Officers in charge of public treasuries are prohibited from making any payments of fixed allowances (the case of political pensions alone excepted), until the abstracts or bills charging the amount of the same have been returned, duly audited, to the authorities transmitting them. Notification by Civil Auditor, with the sanction of government, dated October 31, 1831.

Temporary establishments are not to be entertained without the sanction of the supreme government.

1414. Under the provisions of the present Charter Act of the Company, all officers are prohibited from incurring or authorizing any charges on account of temporary establishments, without the previous sanction of the local and supreme governments, duly obtained on application. When such establishments are absolutely required, a report is to be made in the form No. 5 of appendix G; and all charges of the above nature incurred without such authority are to be at the personal responsibility of disbursing officers. Govt. Order, May 16, 1844. C. O. Sup. Pol. L. P. No. 12 of 1844.

Contingent bills. What charges may be incurred by the magistrate without reference.

1415. Under the orders of government, dated April 10, 1838, the following charges may be incurred by the magistrate without reference to the session judge or superintendent of police:

PRISONERS' EXPENSES. Diet allowance, half yearly clothing, and annual blankets. *See orders December* 13, 1805. Medical charges when passed by the civil surgeon. Subsistence, &c. to prisoners released. *See Reg. IX.* 1793. Extra burkundazes employed on working convicts. *See Govt. Orders, January* 24, 1828.

JAIL. Oil for lighting the jail; brooms, baskets, gumlahs, dammers, durmah mats, rosen, charcoal. Whitewashing the jail. *See Govt. Orders, November* 27, 1823. Charges on account of materials and implements of jail manufactures to the extent of 150 rupees per mensem, if the manufactures for which the charges are incurred have been previously sanctioned by Government.(a) *C. O. Govt. Bengal, No.* 944, *September* 9, 1844.

MAGISTRATE'S OFFICE. Silk, thread, needles, paste, &c. Binding books. Gum, vinegar for ink, wax-cloth, wax-candles, coarse cloth, sealing-wax.

(a) Such charges are to be incurred only so long as the manufactures continue remunerative; and the magistrate will be held personally responsible for any deviation from this rule. C. O. Govt. Bengal, September 9, 1844.

REPAIRS. Thatched sheds within 100 rupees. Repairs of public buildings.

What require the sanction of the session judge;

The following charges are susceptible of sanction by the session judge:

ALL CONTINGENT CHARGES of subordinates to the extent of 100 rupees each item. *See Govt. Order, July* 21, 1829.

DIETING indigent prosecutors and witnesses in attendance at the sessions.

OFFICE FURNITURE. Purchase of tables, chairs, almirahs, boxes, and chests for records, mats, shatranjies, and punkahs, khuskhus tatties, new badges for peons, new seals if required. Country stationery in excess of the authorized monthly allowance.

JAIL EXPENSES. Making new fetters or manacles. Materials for working convicts. Baskets, hoes, pickaxes, and spades when renewed to any extent.

of the superintendent of police;

The following charges are susceptible of sanction by the superintendent of police:

REWARDS for apprehension of offenders [up to 500 rupees]. (*See para.* 1268.) 500

INCIDENTAL expenses incurred, the superintendent's order not exceeding ~~100~~ rupees.

TRAVELLING CHARGES of omlah when deputed on special enquiry in the interior.

KILLING DOGS at two annas per head. *See Govt. Order, August* 29, 1839.

of government;

The following charges must be sanctioned by government:

GROUND RENT of cutcherry, jail, and other buildings (if not previously sanctioned).

EXTRA ESTABLISHMENTS. (*See para.* 1414.)

REWARDS [beyond 500 rupees]. (*See section of "Of rewards."*)

Charge for transporting convicts by sea.

and of the nizamut adawlut.

And the sanction of the nizamut adawlut is required for charges for

REMOVAL OF PRISONERS from one district to another.

REWARDS for meritorious service. (*See para.* 1274.)

C. O. Civil Auditor L. P. June 20, 1838.

Monthly bills for contingent charges are to be sent by the judges direct to the civil auditor.

1416. Monthly statements of contingent charges incurred by the session judges, and commissioners of circuit, are to be forwarded by them direct to the civil auditor,—the duty of examining and checking the statements being vested in that officer, who possesses authority to pass without further reference all such items of charge, as he thinks usual and unobjectionable, whatever their amount, reporting those which are not of that character, in quarterly statements, for the consideration and orders of government. It is not necessary to apply for the sanction of the civil auditor, previously to incurring any contingent charge; disbursements may be made in the first instance on the responsibility of the session judge, or commissioner. Govt. Order, March 31, 1834.

and not through the sudder court.

1417. Under the above rule applications for the disbursement of money are not to be submitted to the nizamut adawlut. C. O. No. 189 of vol. 3.

Form.

1418. Foujdaree contingent bills are to be drawn up in the form No. 6 of appendix G.

Cash and inefficient balances.

The actual cash balance in hand is never to exceed 3000 rupees.

1419. The amount of cash to be retained at any time in a judicial treasury is to be restricted to a sum just sufficient for the current disbursements of the court and diet of prisoners in jail. Whenever, therefore, a magistrate's cash balance (including receipts of every description) exceeds 3000 rupees, it is to be remitted to the collector of the district; from whom the magistrate can always draw for cash, when he requires a sum in excess of the balance in his treasury. Govt. Order, November 24, 1829. C. O. Acc. Jud. Dep. No. 45, December 15, 1829.

Competent authority required for all disbursements.

Officers making over charge of treasuries to furnish statements of cash and in efficient balances; copies of which are to be sent to the accountant.

1420. Officers entrusted with the disbursement of public money are not to make any disbursements without due and specific orders from a controlling and competent authority; or, in cases of advances made on emergency, without speedily obtaining such orders. And no officer is to make over charge of a treasury to his successor, either temporarily or otherwise, without furnishing him with a detailed and comprehensive statement of the cash and inefficient balances of his treasury, in the forms Nos. 7, and 8 of appendix G; and of the causes which have prevented an adjustment of the items of the latter balance; with specific references, in the case of each item, to the substance and dates of correspondence, applications, or instructions; the circumstances which have caused the disbursement, or produced the protracted continuance of the same in balance; and every particular likely to facilitate adjustment. A copy of this statement is to be furnished to the accountant with the certificates of giving and receiving charge; but it is not to be considered as superseding the reports of inefficient balance, or other periodical accounts. C. O. Acc. Jud. Dep. No. 47, March 31, 1830.

Responsibility of all officers in regard to the inefficient balances standing against them in the accounts of any office, which they have had charge of at any time.

1421. All officers in charge of treasuries are held personally responsible for all sums of money expended by them in a public capacity without authority; and, when about to embark for Europe, they are required to give security to government for all sums of their disbursements held in the inefficient balances of the several public treasuries, of which during any period of their service they have had the management; as also for all items of account and differences of remittances, which remain to be adjusted. Every officer therefore should endeavour, by means of correspondence with the officers in charge of treasuries that have been at any time under his control, to ascertain and clear such items of his period as remain unsettled, and for which until settled he will be held personally responsible, whether such items be of disbursements directed by him, or of payments made to him, not credited, which require to be adjusted. In preparing the reports of inefficient balance affixed to the cash accounts, and the statements of balance required by the preceding paragraph, care should be taken that the explanations given are full and specific, and the dates quoted of transmission of bills for audit, &c. correct. C. O. Acc. Jud. Dep. No. 52, February 1, 1832.

Deposits.

Registers to be kept of all deposits, and of re-payments;

1422. The registers of deposits and of repayments are to be kept in English, and counterparts thereof by the treasurer in the vernacular; and the signature of the presiding officer is to be affixed in the registers to the receipt of every deposit, and also to the payment. This does not refer to such payments as occur in the course of transfers or by way of remittances to the collector's treasury, but to the actual return of the deposit money to the parties entitled to receive the same. C. O. Acc. Jud. Dep. No. 40, January 30, 1827.

and to be furnished monthly to the accountant.

1423. These statements are to be furnished to the accountant monthly with the cash accounts, and great care is to be taken in giving the correct numbers and dates of deposits, in order to enable the accountant to draw out a correct detail of the annual balances. C. O. Acc. Jud. Dep. No. 71, February 26, 1838.

Forms of the registers, and rules for their preparation.

1424. The registers are to be kept in the forms Nos. 9 and 10 of appendix G. The register of receipts is to contain a specification of the date and number of each deposit, as well as of the name of the party, or the purpose for which it was made; the entries being stated in the consecutive order of time in which the deposits were made, and numbered in a numerical series commencing from the 1st of May and terminating with the 30th of April following of each official year. In the register of re-payments specific reference must be invariably made to the numbers and dates of receipt of the deposits repaid, whether in whole or in part; and the entries are in all cases to be made in the order of time in which the deposits were received; thus, re-payments of deposits received in the year 1836-37 are invariably to be entered before re-payments of deposits of 1837-38; and re-payments of deposits received in May 1836-37, before re-payments of deposits received in June 1836-37; and so on. Column 4 of the register of re-payments, headed "Balance of deposits," is inserted in order to prevent the occurrence of errors in the shape of excess charges. Explanations of the items need not be given in the returns sent to the accountant, but explanatory notes should be entered in the office copy of the register. Both the registers are invariably to be drawn up on general letter paper. C. O. Acc. Jud. Dep. No. 55, July 26, 1832; and No. 77, November 8, 1842.

Unclaimed deposits of 20 years' standing are to be carried to "Profit and Loss."

Transfer how to be made.

1425. All unclaimed deposits of 20 years' standing are to be carried to the credit of government under the head of "Profit and Loss;" and sums thus removed from the head of deposits to that of "Profit and Loss" are not to be repaid without the sanction of government, obtained in the usual form. In making such transfer, the deposit head is to be charged with the several transferable items in detail, indicating for each the treasury or cash account in which the corresponding credit is to be found,—the numbers and dates of the receipts,—the name of the depositor, or purpose for which the original deposit was made,—and the amount transferred: and the same items are to be credited in similar detail under the head of "Profit and Loss." Only such items are to be transferred as appear, by reference to the credits originally afforded under the first mentioned head, to have been real transactions, regularly brought upon the accounts at the time of their occurrence. Charges subsequently entered under "Profit and Loss" on account of re-payment of claims sanctioned by government must, previous to being exhibited in the body of the account, be audited in the bills transmitted for that purpose, and the debit entry should in all such cases contain a reference to the credit afforded under that head at the time of transfer. C. O. Acc. Jud. Dep. No. 54, August 18, 1832; and No. 70, December 28, 1837.

Charges for subsequent re-payments of these sums how to be credited.

Applications for such re-payments to be made through the accountant.

1426. All applications for permission to repay deposits, previously transferred to the credit of government under the above instructions, are to be forwarded in the first instance to the accountant, with a view to prevent double or erroneous payments, and to his obtaining the sanction of government to the refund if the sums claimed are at the credit of the parties.

Register to be

To guard against the possibility of any over payments on this account, a register is to be

kept in the form No. 11 of appendix G, in which are to be inserted all deposits so carried to the credit of government on the one hand, and per contra the several disbursements which are authorized on the same account. C. O. Acc. Jud. Dep. No. 67, December 24, 1836.

kept of such re-payments.

1427. The following form is to be adopted in writing back to account recoveries on account of excess deposit re-payments:

Form in writing back recoveries on account of excess deposit re-payments.

(In the body of the cash account)

To Fouzdarry deposits,		
Received from individuals in this month as per accompanying extract register, ...	00,000 0 0	
Recovered on account of excess charge in the month of ——— as per accountant's letter No. — dated ———	00 0 0	
		00,000 0 0

(In the memorandum of deposits)

Balance as per last month's account, ...		00,000 0 0
Add receipts in this month, ...	00,000 0 0	
Ditto excess charge recovered as per accountant's letter No. — dated ———, ...	00 0 0	
		00,000 0 0
		00,000 0 0

The object in view when effecting recovery being simply to restore the integrity of the amount at credit in the account under the head of deposits, such recovery should not be inserted either under a new number, or in any other manner, in the register of deposit receipts. C. O. Acc. Gen. No. 91, June 27, 1845.

Jail.

Forms regarding rations to accompany the contingent bills.

1428. With a view to define the checks maintained by the civil auditor over the ration charges for prisoners included in magisterial contingent bills, two forms are to be prepared; the one* to be observed in stating the several items connected with such expenditures in the contingent bill; and the other† to accompany that bill as a modified detail of the daily number of prisoners, in which the fluctuating establishment of burkundazes is likewise to be specified. The prices inserted in the first of these forms are not limited, but chargeable according to the productiveness of the market; where contracts have prevailed under the sanction of authority, the date of the same, the name of the contractor, rates of contract, and the limited term thereof, are to be specified in the contingent bills, his receipts being forwarded therewith, acknowledging the amount received by him in each instance. When brass cooking utensils and platters are sanctioned by government, the date of the order, or an attested copy thereof, is to accompany the bill. In those cases in which alterations of quantity are to be observed in particular days of the week, and on Sundays, as regards convicts withdrawn from labor, a deduction is to be made, without enumerating particulars. C. O. Civil Auditor, May 1, 1845.

* *v. No.* 12 *of appendix G.*

† *v. No.* 13 *of appendix. G.*

Two annual statements to be furnished regarding jail manufactures,

1429. The magistrate is required to furnish to the accountant two annual statements, in the forms Nos. 14 and 15 of appendix G regarding jail manufactures; the first showing on the Cr. side the whole of the charges incurred and disbursed by him in the (official) year on account of manufactories worked by prisoners confined in the jail, citing at the same time the contingent bills in which they are included; and, per contra, the value of commodities produced by such manufactories, whether they consist of paper, gunny, cloth, or any other article: and the second indicating the quantity of the several descriptions of articles produced, and the value realized by the sale thereof, the statement being closed with a balance, if any, of the articles that remain in store unsold at the close of the year. The contingent bill is to contain a head denominated "charges of jail manufactures" for the exhibition of all charges on such account. If any portion of the charge remains unaudited at the close of the year, full details of such charge are to be afforded in the inefficient balance report. All sums realized by the sale of articles manufactured by convicts are to be credited separately in the cash accounts, a head of "produce of works done by convicts" being opened therein subordinate to "judicial charges general;" and are to be exhibited, so as to tally with the cash accounts, on the Dr. side of the second statement, reference being invariably made in the entries therein to the cash accounts: and, in order that the totals of both sides of the two statements may correspond with each other, the balances of the preceding year are to be brought forward, whether they consist of unwrought materials or unsold commodities, the former being shown on the Cr. side of the second statement, and the latter on the same side of the first statement. The value of materials purchased during the year is to be exhibited, on the Cr. side of statement No. 1, separately from the balance of value remaining unwrought at the close of the preceding year, in the following manner:

and a head to be opened in the cash account.

Rules for the preparation of the statements,

No. 1. Cr. side.

Balance of unwrought materials on the 30th April, 1845, brought forward, viz. *(enter details,)*	00	00
Materials purchased during the year, 1845-46 *(enter details,)*	00	00
	00	00

So, the value of the jail manufactures during the year is to be shown, on the Cr. side of statement No. 2, distinctly from the value of manufactures remaining unsold at the close of the year preceding, thus:

No. 2. Cr. side.

Balance of manufactures remaining unsold on the 30th April, 1845, brought forward, viz. *(enter details)*	00 0 0	00 0 0
Articles produced during the year 1845-46 *(enter details)*	00 0 0	00 0 0
	00 0 0	00 0 0

and the credit of disbursements.

Disbursements made on account of jail manufactures are not to be shown under the head of inefficient balance in the cash accounts, and afterwards adjusted with reference to the

sale proceeds of commodities produced, as transactions expunged from the inefficient balance by cash recovery are entirely lost sight of; but they are to be brought to credit in the cash account as directed above. C. O. Acc. No. 83, January 6, 1844; No. 90, June 5, 1845; and No. 98, August 26, 1846.

Jail darogahs to have a commission of 35 per cent. on the proceeds of manufactured goods sold.

1430. Jail darogahs are allowed a commission of 35 per cent. on profits of manufactures carried on under their superintendence; but it is to be strictly limited to the proceeds of articles actually sold, or to the *bonâ fide* value of those consumed for public purposes, and articles remaining in store at the close of the year are not to be included in the calculation. Such payments are subject to the correction of the accountant; and the amount in each instance is to be reported to the secretary to government in the form No. 16 of appendix G. Before expending the balance of 65 per cent. on objects of local utility, the magistrates are previously to obtain the sanction of government. C. O. Govt. Bengal, No. 1058, May 20, 1846.

How such payments are to be credited in the accounts.

1431. In furtherance of the above, the magistrate is to ascertain, at the close of the official year, the profits arising on the sale of the manufactures (not including the articles in store), and to pay to the jail darogah the prescribed commission, holding the payment in inefficient balance until he is furnished with a memorandum from the accountant showing the actual (tested) amount of the profits; the amount thus shown is then to be charged in the cash account under the head of "convict labor fund," supported by an original order of government to be obtained by the magistrate for that purpose. The payment to the darogah is then to be adjusted according to the accountant's memorandum, recovering from him any excess, or paying any deficiency, and the fact of payment to be reported to government as above directed. The magistrate is also to retain in inefficient balance any disbursements, which he is authorized to make on account of objects of public utility from the balance of 65 per cent., previous to the receipt of the accountant's memorandum; and to charge the sums, therein shown, in the cash account under the same head, supported by the original orders of government. Any differences between the amount debitable as per the memorandum and that previously disbursed are to be adjusted in the manner above prescribed for payments to darogahs. C. O. Acc. No. 97, June 24, 1846.

Stamps.

Register to be kept of stamps filed, and memo. thereof to be inserted in the cash account.

1432. With a view to place the aggregate amount of stamps used in law proceedings to the credit of the judicial department in the public accounts, a register is to be kept in each court, in the form No. 17 of appendix G, showing the value of stamps filed daily. Subordinate officers are to keep similar distinct registers, furnishing authenticated copies to their superior at the close of each month. The register is to include the stamps used in judicial proceedings, as specified in sched. B. Reg. X. 1829; and a monthly statement compiled therefrom is to be embodied in the monthly cash account.* C. O. Acc. Jud. Dep. No. 57, February 16, 1833; and No. — September 22, 1841.

* *v. para.* 1448.

Remittances by a magistrate to another district on matters connected with the public service, how to be made.

1433. When a magistrate is desirous of remitting money through the medium of a public bill, he is to apply to the collector of his district for a bill in favor of the magistrate of the district at the revenue treasury of which payment is desired, and to specify the public purpose or transaction relative to which he wishes to make such remittance,—which must be strictly confined to matters connected with the public service. The collector is to issue such

bills at sight, and without any charge for premium; and is to cite in the body of the bills the date of the letter from the secretary to government authorizing such bills (July 20, 1830), as the authority under which they are drawn. C. O. Acc. Jud. Dep. No. 48, August 7, 1830.

Monthly cash account.

1434. The magistrate is to furnish the accountant to government with a monthly cash account, according to the form given in No. 18 of appendix G, to be forwarded on the 15th of each succeeding month together with all the necessary vouchers in support of the charges therein exhibited. In preparing this account he is to attend to the following rules. C. O. Acc. Jud. Dep. No. 55, July 26, 1832, para. 1.

Fixed establishments.

1435. All fixed establishments of police are payable by the collector of the district, and are chargeable in the revenue treasury accounts under the head "By judicial charges general." At the close of each month an abstract of such establishments agreeably to the form A* is to be forwarded to the civil auditor for audit; and, when returned audited, is to be presented, duly receipted by the magistrate with a separate duplicate receipt (to be retained in the records of the collector's treasury), to the collector for payment on the date fixed by public advertisement in the government gazette for the issue of civil allowances. Any sum included in these abstracts unappropriated either on account of absence of the party entitled to it, or other cause, is to be credited in the cash account under the head "To deposits;" and occasional savings in the establishment are to be credited under the head "To profit and loss." Refunds on account of civil allowances which have been passed on abstracts, and afterwards made payable from any other treasury, are to be paid into the collector's treasury, and receipts taken in duplicate for the same. Should the amount of such refunds have been previously credited under the head "To deposits," the magistrate is to charge that head with the amount. The collector is to bring such refunds to credit in his accounts under the head "To judicial charges general." C. O. Acc. Jud. Dep. No. 55, July 26, 1832, paras. 3 to 6.

* *v. form No.* 19 *of appendix G.*

Remittances.

1436. The casual cash receipts including deposits are to be considered available for contingent disbursements; and whenever the disbursements of the court, whether for contingencies or other purposes, exceed the balance of cash in hand, the amount required to make up the deficiency is to be drawn from the revenue treasury of the district upon the magistrate's receipts in duplicate, and credited in his accounts under the head "To collector of ———." The collector is to charge the amount in his revenue accounts, under "By magistrate of ——," supporting the debit entry with the magistrate's original receipt, and retaining the duplicate in his records. C. O. Acc. Jud. Dep. No. 55, July 26, 1832, para. 7.

Contingent bills.

1437. The contingent disbursements are to be embodied in monthly contingent bills, and transmitted to the civil auditor after the countersignature of the session judge has been obtained thereon. The amount of contingent bills until audited is to be retained in the inefficient balance with specific reference to the months to which they belong, and the dates on which they were transmitted for countersignature or audit. After the bills are returned audited, the amount, with exception of any portion suspended or retrenched by the civil auditor, is to be removed from the balance, and the bills themselves are to be forwarded to the revenue treasury duly receipted (as directed above for abstracts of fixed establishments)

with a request that the collector will afford the court the necessary credit in his accounts, under the head "To magistrate of ——," for their amount respectively, and furnish the magistrate with his receipts in duplicate. With the original receipt the magistrate is to support the charges made in his account under "By collector of ——" being the amount of such contingent bills sent to that officer, in whose revenue accounts charges are to be made to the same extent supported by the audited bills as vouchers under the head "By judicial charges general." The items composing the monthly contingent bills are to be classified therein under the heads particularized in form No. 6 of appendix G. C. O. Acc. Jud. Dep. No. 55, July 26, 1832, paras. 8 to 10.

Prisoners and convicts.

1438. The daily allowances to and the number of convicts and prisoners are to be detailed in the contingent bill. Each prisoner is allowed annually one blanket in the cold season (the value of which is not to exceed 12 annas under ordinary circumstances); and half yearly clothing consisting of one dhotee, one chudder, and one turban, two mats and two pillow cases stuffed with straw; the maximum annual charge for each prisoner being 3 rupees exclusive of the blanket. Statements of costs of bazar medicines for prisoners are to be certified upon honor by the surgeon; and, when countersigned by the magistrate, are to be furnished to the civil auditor with the contingent bills in which the amount is included. C. O. Acc. Jud. Dep. No. 55, July 26, 1832, paras. 11 to 13.

Allowances to indigent prosecutors and witnesses.

1439. Allowances for dieting witnesses and prosecutors attending courts of session are to be included in separate statements countersigned by the session judge preparatory to being embodied in the monthly contingent bills, and such countersigned statements are to be furnished with the bills to the civil auditor. C. O. Acc. Jud. Dep. No. 55, July 26, 1832, para. 13.

Temporary establishments.

1440. Temporary establishments are not to be entertained without the previous sanction of government, the date of which is to be quoted; and, when authorized, the magistrate is to be careful to retain the payment that is made on their account in the inefficient balance; and to include the amount in the next succeeding contingent bill for audit, accompanied by copy of the authority to enable the auditor to pass the same. C. O. Acc. Jud. Dep. No. 55, July 26, 1832, para. 14.

Deposits.

1441. All deposits are to be credited to that head in the accounts; and their amount is available, if necessary, for the public exigencies. Separate registers of receipts and of re-payments of deposits are to be kept [according to the rules quoted in para. 1422 *et seq.*] and forwarded monthly with the cash account; a memorandum of balances being inserted on the reverse of the latter, as shown in the form No. 18 of appendix G. C. O. Acc. Jud. Dep. No. 55, July 26, 1832, paras. 15, 16, and 17, and No. 71, February 26, 1838.

Fines.

1442. All sums realized by fines, forfeitures, escheats, or sale of unclaimed property are to be credited to the head "To fines, forfeitures, &c." Charges on account of fines refunded are to be supported, as vouchers, by the orders authorizing such returns; and are to be debited in the accounts under "By fines." C. O. Acc. Jud. Dep. No. 55, July 26, 1832, paras. 18 and 19.

Ferry collections.

1443. The collections are to be brought to credit in the monthly cash accounts under the head of "To ferry funds;" and the bills for ferry establishments, and any other charges authorized by government, are to be debited to the same head under the usual form of civil

audit. No disbursements are to be made from the ferry funds without the express sanction of government [except within the sum of 500 rupees which the superintendent of police L. P. is authorized to sanction, under Govt. Not. No. 1021 of 1841]; and any disbursements made under such sanction must nevertheless remain until audited in the inefficient balance. This rule is applicable to fixed establishments as well as to extraordinary and contingent charges. The items while held in inefficient balance are clearly to indicate the date of government authority, and that on which a bill for their amount has been forwarded for audit to the civil auditor. For the speedier adjustment of such charges, the magistrate is to include them in a separate monthly bill, transmitting them to the civil auditor, accompanied by a copy of the authority under which they have been incurred, and such other voucher as that officer deems requisite. A memorandum is to be appended to the foot of the monthly cash account indicating the state of the fund at the close of each month. The difference between the amount collected and that disbursed on account of the fund is to be remitted monthly, under a separate chulan, to the revenue treasury, and is to be debited in the accounts with a distinct specification of the nature of the remittance under the head "By collector of ——." The amount of such remittances is not to form an item of deduction from the balance of the memorandum, which will then show from month to month the actual state of the surplus of the ferry fund in the revenue treasury, while the debit entry above mentioned will indicate the monthly surplus collections made over to that treasury. If the disbursements in any month exceed the collections, the magistrate is to draw the necessary amount by a receipt from the revenue treasury, and the sum thus drawn is to be debited in the collector's account as a remittance to the magistrate, and the latter is to give the collector credit for the same in his account of the same month. A memorandum of the collections and payments made on account of ferries is to be affixed to the monthly cash account. C. O. Acc. Jud. Dep. No. 53, March 7, 1832; and No. 55, July 26, 1832, para. 20.

Chowkeedaree.

1444. All sums collected on account of chowkeedaree are to be credited under the head "To chowkeedaree." For charges under this head the magistrate is to furnish as a voucher, with the monthly cash accounts, a statement agreeably to form E* indicating the number of chowkeedars, the rate of allowance paid to each, and the month for which the allowances are paid, together with the aggregate amount disbursed attested by his official seal and signature. This is to obviate the inconvenience arising from the transmission of voluminous receipts which must necessarily burden the dak packages. The allowances of the bukshee are to be distinctly charged under this head under the provisions of sect. 4, Reg. II. 1832, furnishing that person's receipt as a voucher of the account. A memorandum is to be exhibited at the foot of the monthly account of the balance that remains of the chowkeedaree fund after payment of the establishment including the allowances of bukshee in the following form:

* *v. form No. 20 of appendix G.*

Balance at the close of the account on the ——	00 0 0	
Add amount received in this month as credited herein, ...	00 0 0	
		000 0 0
Deduct amount disbursed in this month as debited herein,		000 0 0
Balance or chowkeedaree surplus on the ——		000 0 0

Whatever may be the nature of any disbursement debitable under this head of the cash account, although authorized by government, such charge is not to be exhibited in the accounts unless supported by an audited voucher, the amount until audited being retained in the inefficient balance. C. O. Acc. Jud. Dep. No. 55, July 26, 1832, paras. 21 to 24.

Cash balance.

1445. In exhibiting the actual cash balance, which is never to exceed 3000 rupees,* the magistrate is to show the currencies of which it is composed, detailing the amount separately in gold mohurs, rupees, pice, and cowries. Any excess above 3000 rupees is to be remitted to the collector's treasury at the close of each month for deposit. The amount so remitted is to be charged under the head "By collector of ——." The collector in like manner is to give the magistrate credit for such remittances under the head "By magistrate of ——." C. O. Acc. Jud. Dep. No. 55, July 26, 1832, para. 26.

* *By order of government, dated Nov. 24, 1829, v. para.* 1419.

Detail of the currencies to be given at the foot of the cash account.

1446. A separate monthly report on the cash balance of the treasury is not required; but a detail of it is to be subjoined at the foot of the cash account, as follows:

BY BALANCE.

Cash in court on the ——

Government promissory notes, ...		000		
Bank of Bengal notes, ...		000		
		——	000	
Sicca Gold Mohurs—Tale 00—value		000		
Company's ditto—Tale 00—value		000		
		——	000	
Sicca rupees full weight—Tale 00—value—Co's. Rs. ...		000		
Ditto short weight—Tale 00—value—Co's. Rs.		000		
Company's rupees full weight,				
Double rupees, ...		000		
Rupees		000		
Half		000		
Quarter		000		
		——	000	
Company's rupees short weight,				
Rupees	000			
Half	000			
Quarter	000	000		
Deduct short weight		000		
		——	000	
Company's copper pice,				
Double pice	000			
Pice single	000			
Pie pieces	000			
Old pice	000	000		
Cowries		000		
		——	000	
Total...			——	000

C. O. Acc. Jud. Dep. No. 71, February 26, 1838; and No. 75, November 21, 1838.

The amount of inefficient balance is to be noted in the cash account, and a detailed explanation of the items given.

1447. In order to enable the accountant to keep the items of inefficient balance down to the lowest possible scale, to expedite their adjustment, and to ascertain the responsibilities of disbursing officers, it is necessary that he should be able to trace the monthly progress of each item towards final adjustment. The inefficient balance is therefore to be noted in the monthly cash account, and full details of each item are to be shown therein in the form No. 8 of appendix G. The items are to be classified under the heads exhibited in the form according to the several years of account to which they appertain, commencing with the earliest unadjusted item, and concluding with the month for which the report is furnished. Appropriate remarks are to be inserted indicating the causes of delay in the adjustment of individual items, and the measures that have been adopted for their removal from balance, citing the dates of application for authority or audit for the information of the accountant, with the view to his urging in the proper quarter the disposal of references regarding them, or otherwise aiding in the adjustment; or explaining, if the items are eventually recoverable from parties and not debitable to government. Care is to be taken to distinguish the expenditure for repairs of roads from that which is debitable to the ferry fund; and, in like manner, all the other items, in order that every facility may be afforded for accurately ascertaining the amount debitable under each head of the account. C. O. Acc. Jud. Dep. No. 638, April 23, 1842; No. 59, April 12, 1834; and No. 68, March 31, 1837.

Memo. of stamps filed.

1448. A memorandum is to be inserted at the foot, or on the reverse, of the cash account showing the amount in rupees of the value of the stamps filed in the courts during the month [according to the daily register prescribed in paragraph 1432.] C. O. Acc. Jud. Dep. September 22, 1841.

Convict labor fund.

1449. A separate head is to be opened in the cash account, entitled "Convict labor fund," under which are to be entered all charges incurred that are defrayable from that fund, on account of commission to the darogahs or of works of public utility, the debits being invariably supported by the original authority of the government sanctioning them. C. O. Acc. Gen. No. 93, August 28, 1845.

Miscellaneous.

Unauthorized funds are not to be created or maintained.

1450. The creation and maintenance of unauthorized funds in the public offices, through the means of fines, or from deductions made from the pay of establishments, is prohibited; the sums so accruing are to be carried to the credit of government. C. O. N. A. No. 90 of vol. 3. C. O. Sup. Pol. L. P. No. 12 of 1841.

Custody of public securities given to government by heads of offices, and also of securities made over to heads of offices by their subordinates.

1451. As a general rule, all public securities lodged with the government or with government officers as guarantee for the due performance of official duties are to be deposited for safe custody with the sub-treasurer of the general treasury. Deposits made by heads of offices direct to the government are to be endorsed over to the secretary to the government in the department concerned; and deposits made by subordinate officers are to be endorsed over to the official head of the department or office concerned; and, being lodged in the general treasury thus endorsed, such securities are returnable only under an official order from the secretary to the government in the department to which the depositor belongs. Under these circumstances, if, with the permission of government, the parties should so desire it, the sub-treasurer is to draw the interest accruing on the securities in his custody, and pay it over to the officer concerned in cash if in Calcutta, or by bill on the revenue treasury of the district, if the deposit is for due performance of duty in the mofussil.

In this general rule it is not intended to include securities deposited with public officers for revenue or judicial purposes, or for the performance of any ordinary contract for supplies, as such securities are necessarily returnable at uncertain periods on the completion of the contract or obligation, and would be inconveniently encumbered by forms, which are sufficiently applicable to a comparatively permanent deposit for the faithful discharge of public duty and for security against loss of government property. Govt. Order, July 26, 1845, in C. O. Acc. Gen. No. 94, September 29, 1845.

On what terms rupees are to be received by magistrates, and credited in the cash accounts.

1452. Under Act. XIII. 1836, the sicca rupee is no longer a legal tender; but is to be taken at all government treasuries as bullion liable to a seignorage duty of one per cent. There were three kinds previously in circulation, viz.

First. The 19 sunn old standard Moorshedabad sicca rupee of Reg. XXXV. 1793, weighing 179⅔ grains.

Secondly. The standard sicca rupee of Reg. XIV. 1818, weighing 191·916 grains.

Thirdly. The standard sicca rupee of Reg. VII. 1833, weighing 192 grains.

These rupees are to be taken, when tendered in payment of deposits or for other authorized purposes, by *weights* of their own standards respectively, one per cent. sicca for every 100 sicca weight of rupees of such standards being demanded over and above, and separately credited as seignorage duty in the cash accounts, under the head of Mint Master at the presidency, after conversion into Company's rupees at the intrinsic value of 6-10-8 per cent. The same rate is to be adopted in bringing to account every 100 sicca *weight* of sicca rupees of each of the standards above specified. The Company's rupee is to be taken as of full weight, provided that it has not lost more than two per cent. in weight; in which case it is to be taken as bullion, i. e. subject to seignorage duty of one per cent. If the magistrate has not weights of the different standards above enumerated, he should borrow them from the collectorate. Each standard may be known by its milling, or plain edge.(a) C. O. Acc. Jud. Dep. No. 69, September 27, 1837; and No. 75, November 21, 1838.

Copper coins if entirely defaced are not to be received;—if much defaced not to be re-issued.

1453. Copper coins entirely without inscription are not to be received into any government treasury; and when the inscription or device on any legally current copper coins is much defaced by ordinary wear, they are not to be re-issued from any government treasury, but reserved for transmission to the Calcutta mint.(b) Govt. Order in C. O. Acc. Gen. No. 89, April 15, 1845.

(a) The old standard sicca rupee of Reg. XXXV. 1793 has an oblique milling. The sicca rupee of Reg. XIV. 1818 has a straight milling. The sicca rupee of Reg. VII. 1833 has a plain edge without milling, and a dotted rim on the face. To C. O. Acc. Rev. Dep. No. 574, July 14, 1838, there is annexed a memorandum indicating the mode and rate of receipt of each description of rupees at the government treasuries; but, in consideration of the present limited circulation of other currencies than the Company's rupee, it does not seem necessary to introduce it here.

(b) In this order are the following remarks on the copper coins, which should be received into the government treasuries as pyce of genuine government coinage, and which have not been declared illegal by any legislative enactment. Independent of the copper coinage issued under the provisions of Acts XXI. 1835, and XXII. 1844, [i. e a pyce weighing 100, a double pyce weighing 200, and a pie weighing 33⅓ grains troy] the copper coins which have legal circulation in the provinces of Bengal, Behar, and Orissa, are the copper pyce, struck at the Calcutta mint in conformity with Reg. XXV. 1817, weighing 100 grains troy each; and the half anna piece and pie piece, weighing respectively 200 and 33·333 grains troy, coined under Reg. III. 1831. Besides these coins struck in conformity with the Regulations quoted, there were others previously issued from the Calcutta mint, which, though not legalized by

Trisoolee pyce not to be received.

1454. Under no circumstances will Government consent to sustain loss from the irregular receipt of trisoolee pyce; and the accountant is authorized to withhold the certificate of any officer in charge of a treasury, who is unable to prove, if necessary, that there are no trisoolee pyce in his cash and inefficient balances. All officers must pay attention to the state of the law respecting the receipt of copper currency in satisfaction of public demands. C. O Acc Gen. No. 85, July 10, 1844.

Rules under which officers may receive savings from the pay and allowances of their establishments for investment in the government savings' bank.

1455. Officers in charge of treasuries, and other functionaries who are competent to sign pay abstracts of civil establishments, are competent to receive savings from the pay and allowances of their respective establishments for investment in the government savings' bank,—under the following rules:—Every depositor is to be supplied with a small book (on the first page of which is to be entered his name, occupation or employment, and residence) and every receipt and payment is to be entered therein both in figures and writing, the former to be attested with the signature of the receiving officer, the latter with that of the payee; and no receipt or payment is to be permitted without the production of the book by the depositor himself, in all possible cases, in order that the necessary order may be recorded therein. The receiving officer is to keep a register of such deposits, in the form No. 21 of appendix G; and an attested extract of this register, comprising all the entries made in every month, is to be forwarded to the secretary to the savings' bank. Credit is to be given in the cash account of the same month for the aggregate amount as follows:

To GOVERNMENT SAVINGS' BANK.

To cash received from the civil establishment of this magistracy (or other office) in this month 000 0 0

Upon an application for payment, which should be in the form No. 22 of appendix G, the officer is to inspect the bank book of the depositor, and otherwise to satisfy himself that the applicant is the identical person who made the deposit, or his heir, or representative, or duly constituted attorney; and having done this, he is to countersign the application, certifying as to the party's identity or authority, and transmit it to the secretary to the savings' bank, who, with reference to the account of the party, is to inscribe thereon an order for payment; or, if payment is objectionable, he is to assign his reason for declining payment, and re-transmit the application for return to the applicant who, if dissatisfied with the decision communicated, is to address the secretary to the bank on the subject. If the payment takes place, the officer is to make an entry of payment

special enactment, the government is nevertheless undoubtedly bound to recognize. These may be briefly stated as follows: From May 1796 down to the year 1808-9, single pyce were issued, each weighing 12 annas or 134¾ grains, and half pyce, each weighing 6 annas or 67⅜ grains, the former at 64, the latter at 128 to one rupee. In October 1808 the weight of the single pyce was reduced to 9 annas or 101·06 grains, and in August 1817 to 100 grains by Reg. XXV. 1817. No half pyce of this description appear ever to have been coined. In 1808-9 Behar single pyce each weighing 101 grains were coined to circulate at 64 to the rupee. Moreover from December 1807 down to the passing of Reg. X. 1809, there was a coinage of Benares double pyce, each of 196¼ grains, single pyce of 98¼ grains, and half pyce each of 49⅛ grains, which, though struck for and remitted to Benares, can hardly be held to come within the provisions of Reg. X. 1809. By Act XIII. 1836 all pyce struck at the mints of Benares and Furruckabad, under provisions of Reg. X. 1809, Reg. VII. 1814, and Reg XXI. 1816, ceased to be legal tenders in the provinces of Bengal, Behar and Orissa; and by Act XIII. 1844 trisoolee pyce were declared altogether illegal, and withdrawn from circulation.

in the bank book, as also an entry in the register of payments, to be kept in the form No. 23 of appendix G, the party receiving the amount being required to sign both the book and the register, before the issue of the warrant for payment to the treasurer, which warrant should be endorsed on the application ordered for payment. Upon the receipt of the order the treasurer is to pay him the amount, debiting "government savings' bank" therewith; the amount paid in each month is to be debited in the aggregate in the cash account, as follows:

By Government savings' bank.

Amount paid to individuals in this month, as per orders of the secretary to the bank herewith transmitted, ... 000 0 0

C. O. Acc. Jud. Dep. No. 58, Jan. 20, 1834; and No. 520, December 15, 1835.

Rules under which certain relief may be afforded to distressed British seamen.

Rate of subsistence.

1456. Under Act 11th George IV. cap. 20, sect. 82, and in pursuance of orders from the Lords Commissioners of the Admiralty, relief may be afforded to distressed British seamen at the rate of 1s. 6d. a man a day. Sums so disbursed are to be charged under the head of "Her Majesty's government" in the cash account, the debits being supported invariably with bills drawn up according to the form (No. 24 of appendix G) prescribed for the government of Her Majesty's consuls abroad. If however a sufficiency of the necessaries of life can be obtained at a less rate, no more than is absolutely requisite to purchase the same is to be allowed, it not being the intention of the Legislature to grant any superfluous allowance to seamen in distress, or to encourage them to idleness by too comfortable a subsistence at the public expense. This relief is only to be afforded until an opportunity offers for sending them to some port in Her Majesty's dominions, or otherwise disposing of them. If a sufficiency of the necessaries of life for a day cannot be obtained for the above mentioned allowance, the men are to be subsisted upon the most reasonable terms in the power of the relieving officer. If it is found more economical that the men should be boarded than paid this allowance in money, the bills and receipts of the persons with whom they are so boarded are to be sent in addition to the signatures of the men. No higher rate is to be paid for the subsistence of masters and mates of shipwrecked vessels than for common seamen. Hanoverian, Ionian, and Asiatic seamen, natives of territories belonging to the East India Company, not being considered as subjects of Great Britain, are not to be subsisted or sent home at the expense of the Admiralty: but all foreigners who have served in time of war for three successive years in any of Her Majesty's ships are entitled to the same privileges as British seamen. In all cases of shipwreck of British vessels, when the master of the vessel, and such of the crew as he judges proper, remain by the wreck for the preservation of the property, or until the materials and stores are collected and disposed of, and any of these parties apply for assistance, they are not to be considered as distressed mariners to be relieved at the public expense; but any pecuniary assistance which it is deemed advisable to afford them is to be charged in a separate account to be forwarded with the cash account, in order that the amount may, if practicable, be recovered from the owners for whose benefit alone such expenses can be considered as having been incurred. For expenses incurred on account of clothing, medical attendance, &c., of distressed seamen (belonging either to Her Majesty's or the merchant service), the relieving

In cases of shipwreck, when the master remains by the wreck for the preservation of the property

Clothing, medical attendance, &c

officer is to transmit bills of particulars and receipts from the persons to whom the money is paid, the signature or mark of the seamen in proof that they were supplied with the articles, or received the medical attendance charged for, together with a certificate from himself that the clothing or medical attendance was absolutely necessary, and could be obtained by the parties in no other way. Such expenses are to be defrayed as far as possible out of the wages of the seamen. No difference is to be made in the quality of the clothing supplied to masters, mates, and seamen; more clothing is not to be supplied than is absolutely necessary; and beds and blankets are not sanctioned by the instructions. Items of expense for parties who are not seamen, are not to be introduced into these accounts. In the event of any deviation from the rules prescribed, or any informality in the vouchers submitted, the relieving officer will be held personally responsible for such irregular disbursements. C. O. Acc. Gen. No. 95, December 31, 1845; and No. 99, November 23, 1846.

The rules refer to seamen only.

Officers held responsible for irregular disbursement

BOOK II.

OF THE POLICE AND MINISTERIAL OFFICERS, LANDHOLDERS, AND JAIL.

CHAPTER I.

OF THE SUPERINTENDENT OF POLICE.

Appointment.

1457. It is lawful for the Governor of the Presidency of Fort William in Bengal to appoint a superintendent of police for the territories under his government, or for any part thereof; and for the Lieutenant Governor of the North West Provinces to appoint a superintendent of police for those provinces, or for any part thereof. Act XXIV. 1837, sect. 1.

By what rules to be guid

1458. Whenever a superintendent of police is appointed under this Act, such parts of section 7, Reg. I. 1829, as vest the commissioner of revenue and circuit with the duties and powers belonging to the superintendent of police, shall cease to have effect in the territories which may be comprised within the jurisdiction of such superintendent;(a)—and such superintendent is to be guided in the execution of the duties of his office by the [following] rules contained in Reg. X. 1808, and other regulations subsequently enacted, in regard to the said office, in so far as they are not modified or repealed by this Act. Act XXIV. 1837, sect. 2.

He is from time to time to proceed to the different zillahs in his jurisdiction.

1459. The primary object of the appointment of the superintendent of police(b) being the apprehension of dacoits, kazzaks, thugs, budhucks, and other descriptions of public

(a) Whenever a superintendent of police has not been appointed under the above provisions, the functions of that officer are of course performed by the commissioner of circuit.

(b) The objects of the appointment of a superintendent of police are thus explained in the preamble of Reg. X. 1808:—"Under the system of police established in the provinces subject to the Presidency of Fort William, the zillah and city magistrates, with the police officers and other persons acting under them respectively, have exclusive authority, in all matters of police, within their respective jurisdictions. It is however consistent with the practice of other governments that judicious and well concerted measures should occasionally be adopted from the capital, in addition to the local administration of the police, for the apprehension of public offenders, and for the maintenance of general order and tranquillity throughout the country. By concentrating information obtainable from different parts of the country in a particular office at the presidency, a successful plan of operations may be devised and executed, when the efforts of the local police officers would be unavailing. Information and measures conducive to the discovery and seizure of the gangs of dacoits, which still continue to infest many of the zillahs in the province of Bengal, may especially be promoted by the appointment of a superintendent of the police. A power, vested in this officer, to act in concert with the zillah and city magistrates, or independently of them, as circumstances shall direct, may also be usefully employed in the detection and apprehension of persons charged with or suspected of other public offences; and to promote this object it is expedient that he should be one of the justices of the peace for the presidency."

offenders, guilty of the commission of robberies and other crimes by open violence, he is from time to time to proceed into the different zillahs comprised within the limits of his jurisdiction, according as he may deem necessary and proper, or as the government may direct:—provided, however, that this is not to be construed to prevent him from exercising the full powers of his office throughout the whole extent of his jurisdiction, in whatever part of it he may at any time be resident.(c) Reg. VIII. 1810, sect. 4.

To keep himself constantly informed of the actual state of the police.

1460. It is the duty of the superintendent to keep himself constantly informed, by communication with the local magistrates, with the darogahs of police, and with the zumeendars and others, and by every other practicable means of inquiry, of the actual state of police, in the several zillahs comprised within his jurisdiction; and to submit to government any information respecting the prevalence of public offences in any of those zillahs, or on other points appearing to him to require the interposition of government. Reg. VIII. 1810, sect. 5.

His process how to be executed.

1461. The superintendent of police is empowered to execute his warrants, and other process, in the form prescribed by the regulations, either by means of his own officers, or through the local authorities, as he judges proper. The magistrates, and all persons acting under them, are required to aid and support the officers of the superintendent of police in the execution of any warrant or other process issued by him, under his seal and signature; and resistance to any process so issued is punishable in like manner as provided by the regulations for resistance to the process of a magistrate. Reg. X. 1808, sect. 6.

Resistance to it how punishable.

Sentence may be passed by himself.

1462. The superintendent of police is competent to pass sentence against any person, amenable to his jurisdiction, who is convicted before him for resistance to the execution of a legal process issued by him under the above rule; and also against all persons apprehended by and proved guilty before him of any offence, punishable under the existing regulations by the magistrates. Const. No. 98.

Concurrent jurisdiction with magistrates.

1463. The superintendent of police is to possess a concurrent jurisdiction with the several magistrates within his jurisdiction. Reg. X. 1808, sect. 5.

He may certify his sentences to the magistrate for execution.

1464. The superintendent is competent to certify all sentences passed by himself on offenders, in cases in which such sentences cannot conveniently be carried into effect under his immediate directions, to the magistrate of the district in which the offence has been committed; and the magistrate, to whom such application is addressed, is authorized and required to carry the sentence of the superintendent into execution, in the same manner as if it had been passed by the magistrate himself. Reg. III. 1812, sect. 5, cl. 1.

So, in commitments made by him to the sessions, and the magistrate is to superintend the conduct of the prosecution.

1465. In cases in which persons are committed or held to bail by the superintendent of police for trial before the sessions court, and he is not conveniently able to superintend the conduct of such prosecutions himself, it is competent to him to certify the order regarding the trial to the magistrate of the district in which the offence is alleged to have been committed; and the magistrate, on receipt of such application, is then to superintend the

(c) Commissioners are expected to visit the interior of the several districts under their authority, during the temperate season of the year; and must be prepared at all times, to proceed to any part of their jurisdiction, when circumstances appear to require their presence. Govt. Order, July 7, 1829.

conduct of the prosecution before the sessions court in the same manner as if the accused party had been committed or held to bail by the magistrate himself. Reg. III. 1812, sect. 5, cl. 2.

1466. Provided, however, that nothing contained in the preceding clauses is to be construed to prevent the superintendent of police from causing sentences passed by him under the regulations being carried into effect under his immediate directions, or from superintending the conduct of prosecutions against persons committed or held to bail by him for trial before the sessions court, in cases in which he deems it advisable to execute those duties himself. Reg. III. 1812, sect. 5, cl. 3.

But the superintendent may carry his own sentences into effect, or superintend the prosecution of his own commitments.

1467. Should the superintendent of police, on visiting any district of his jurisdiction, deem it advisable to take under his immediate charge, for the purpose of exercising temporarily the powers of magistrate, any police thana or thanas of such district, he is to make the necessary application for that purpose to the local magistrate, who is to comply with all requisitions to that effect from the superintendent of police without awaiting any specific orders from government. Reg. XVII. 1816, sect. 12, cl. 1.

He may take charge of any thanas.

1468. In such case the superintendent of police is to exercise the same powers as are vested in the magistrates with regard to the removal or suspension of any of the police officers attached to the thanas, of which the superintendent takes charge under the foregoing clause; and the magistrate is not authorized, without the special sanction of government, to exercise any concurrent jurisdiction in such thana or thanas, except in the cases provided for in sect. 16, Reg. XXII. 1793; sect. 15, Reg. XVII. 1795; and sect. 16, Reg. XXXV. 1803 [*i. e.* cases in which a magistrate empowers his police to apprehend persons in another jurisdiction, when the offence was committed within his own jurisdiction, or when the offender was actually within his jurisdiction at the time when the charge was preferred against him: *v. para.* 152]. Reg. XVII. 1816, sect. 12, cl. 2.

In such case he is to exercise the powers of magistrate therein; and the magistrate of the district has only the same concurrent jurisdiction therein, as he has in other zillahs.

1469. The superintendent of police, in his capacity of magistrate, is equally subject to the control of the sessions court with other magistrates; and warrants and orders of the sessions court may be issued to him in like manner as they are usually issued to the magistrates. Const. No 82.

In his capacity of magistrate he is subject to the session judge as a magistrate.

1470. A commissioner of circuit was informed that he was not competent, in that capacity, to fine a person under sect. 5, Reg. VIII. 1825 [which provided for the punishment of persons bringing false and malicious charges against an European public officer, but is repealed by Act XXVI. 1839]; but that, with regard to a complaint against the nazir and peons of the magistrate's office, he possessed, as superintendent of police, the powers of magistrate in the punishment of false and malicious complaints. Const. No. 754.

Power to punish for false and malicious complaints.

1471. The superintendent of police appointed under this Act is to exercise all the powers vested in the commissioners of circuit by sect. 3, Reg. I. 1829 [*i. e.* the powers formerly vested in the courts of circuit] in regard to the appointment, suspension, and removal of any ministerial or police officer, subordinate to any magistrate or joint magistrate; and such orders of the superintendent of police are not open to revision by the nizamut adawlut. Act XXIV. 1837, sects. 4, and 6.

Powers in regard to the appointment, suspension, and removal of ministerial and police officers.

1472. The superintendents of police are competent to remove or appoint any ministerial officer employed upon their respective establishments, whenever they see sufficient cause; and all such appointments and removals are final. Reg. XVII. 1816, sect. 10.

He may require copies of the proceedings in the sessions courts.

1473. The superintendent of police is authorized to make an application to be furnished with a copy of proceedings in trials by the sessions courts, and it is incumbent on those courts to comply with such applications. Const. No. 141.

All public officers are to co-operate with the superintendent, and to afford him every assistance.

1474. The superintendent of police is authorized to correspond, either publicly or secretly, with the officers of government in every department, upon subjects connected with the discharge of the duty committed to him:—and all public officers are directed to furnish the superintendent with any information they may possess upon such subjects; as well as generally to co-operate with him, and to afford every assistance in their power to enable him to accomplish the objects of his appointment. Reg. X. 1808, sect. 7.

1475. Magistrates are enjoined to afford every aid and co-operation to the superintendent of police, and his officers, in the discharge of the duties vested in them; and the different provincial courts are, in like manner, required to give every support to the superintendent and his officers, which is consistent with the principles of justice and the general regulations. Reg. VIII. 1810, sect. 6.

He is to communicate immediately with government.

1476. The superintendent of police is to communicate immediately with government, through the secretary, upon all matters connected with his office; and is to act under such instructions as are, from time to time, transmitted for his guidance by the order of government. Reg. X. 1808, sect. 8.

All correspondence of the magistrates with government regarding matters of police is to be conducted through the superintendent.

1477. All correspondence of the magistrates relative to the strength, distribution, or expense of the police establishments, whether temporary or permanent, or respecting any alteration of police stations, or of their local boundaries, and generally all correspondence of those officers with the government which has reference to arrangements on matters of police, is to be conducted through the office of the superintendent of police. Reg. XVII. 1816, sect. 13.

The superintendent is under the general authority of the nizamut adawlut.

1478. The superintendent of police is also to be considered under the general authority of the nizamut adawlut, in all matters relative to the police; and upon any point not expressly provided for by the regulations, or by the orders of government, is to be guided by the instructions of that court. Reg. X. 1808, sect. 9.

WEST BENGAL SECRETARIAT LIBRARY

CHAPTER II.

OF THE OFFICERS OF POLICE.

SECTION I.

OF THE POLICE ESTABLISHMENTS.

Lower Provinces.

The charge of the police vested in whom.

1479. The police of the country is under the exclusive charge of the officers appointed to the superintendence of it on the part of government. The landholders and farmers of land, who were bound to keep up establishments of thanadars and police officers for the preservation of the peace [previous to December 1792, *v. para.* 30], are prohibited entertaining such establishments.(*a*) Reg. XXII. 1793, sect. 2.

The division of the zillahs into police jurisdictions.

1480. The magistrates were required to divide their respective zillahs, including the rent free lands, into police jurisdictions: each jurisdiction to be ten coss square, except where local circumstances rendered it advisable to form all or any of the jurisdictions of greater or less extent: the guarding of each jurisdiction to be committed to a darogah, or superintendent, with an establishment of officers: the darogahs with their establishments to be stationed in the centre of their respective jurisdictions, unless for special reasons it was thought expedient in particular instances to fix them in any other situation; and the jurisdictions to be formed in such manner as to bring the principal towns, bazars, and gunjes, in the centre of them, that the police establishments might serve for the protection of these principal places, as well as the circumjacent country: the police jurisdictions to be numbered, and to be named after the places in which the darogahs and their establishments were stationed. Reg. XXII. 1793, sects. 4 and 5.

Such jurisdictions numbered and named;

and the names and numbers are not to be changed.

1481. The magistrates are not to change the names or numbers of the jurisdictions, nor to alter the limits of them, without the sanction of government. Reg. XXII. 1793, sect. 5.

The division of the cities into wards.

1482. The magistrates of the cities of Patna, Dacca, and Moorshedabad, were required to divide the cities and the places adjacent, subject to their respective jurisdictions, into wards; each ward to be guarded by a darogah with a proper establishment. Reg. XXII. 1793, sect. 26.

(*a*) This prohibition does not extend to any district included in the jurisdiction of the magistrate of the Jungle Muhals, the police of which, subject to the control of the magistrate, has been or may be committed to the zumeendar, or to the manager of a zumeendaree. It is also declared inapplicable to any landholder, or to any farmer or manager of land, whom government authorizes to entertain an establishment of police officers, whether in the Jungle Muhals, or in any other muhal or district whatever. In such cases particular rules are provided for the zumeendars; and government has the power of extending them, either in whole or in part, to any other muhals, the police of which is entrusted to a zumeendar, or other landholder, or to a farmer or manager of land. See sects. 5 and 6, Reg. XVIII. 1805. Such zumeendars are to be guided also by the rules of Reg. XX. 1817, as far as they are applicable to their duties, as chief police officers. See cl. 3, sect. 33, Reg. XX. 1817 (*para.* 1488).

The names and numbers of the wards are not to be changed.

1483. The wards were to be numbered and named; and the magistrates are not to change the names or numbers of the wards, or alter their limits, without the sanction of government. Reg. XXII. 1793, sect. 27.

Rules for patroling the wards throughout the night.

1484. The jemadars of the establishments, with one half of the establishments, are to patrol their respective wards without intermission from sunset until 12 o'clock at night. The darogahs with the other half of their establishments are to patrol their respective wards without intermission from 12 o'clock at night until daylight. The patrols are to move about as silently and with as little noise as possible, that thieves and other disorderly persons may never be apprized of their approach. The patrols of the several wards are to be furnished with a singharah or horn, which they are to sound when they meet with robbers or other persons guilty of a breach of the peace, and have occasion to give the alarm to the other patrols or to the inhabitants of the ward that they may co-operate to the apprehension of the offenders, but not otherwise. Reg. XXII. 1793, sect. 29.

Patrols to be furnished with horns.

Mohulladar and mohulladarin appointed to each ward.

1485. To assist the darogahs in obtaining the earliest intelligence of any robbers or other offenders that are concealed, or have taken up their residence within their respective wards, a mohulladar and mohulladarin are to be appointed to each ward, subject however to the orders of the darogahs, to whom they are to convey immediate information of any offenders that are found in their respective wards. Reg. XXII. 1793, sect. 30.

City police to be guided by Reg. XX. 1817, in discharge of general duties.

1486. The police officers appointed in the cities and towns are to be guided, in their discharge of the general duties of police, by the rules prescribed in this regulation for the guidance of the darogahs of police, as far as the same are applicable, and in the special police duties of the cities and towns by the rules in force which relate to the police of the cities and towns. Reg. XX. 1817, sect. 34.

North West Provinces.

The charge of the police vested in whom.

1487. The charge of the police of the country, throughout the province of Benares, the ceded and conquered provinces, and Bundlecund, is vested, subject to the control of the magistrates, in the officers who are appointed to the superintendence of it on the part of government, and subordinate to them in the landholders, and farmers of land, who by their engagements are responsible for the preservation of the peace within the limits of their respective estates and farms. Reg. XIV. 1807, sect. 4.

Zumeendars entrusted with the police are to be furnished with copies of, and to obey the rules of Reg. XX. 1817.

1488. Copies of Reg. XX. 1817 are to be furnished to all zumeendars, or other landholders or managers of estates, entrusted with the management of the police; and such zumeendars, or other landholders or managers, are to observe the rules therein prescribed, as far as the same are applicable to their duties as chief police officers. Reg. XX. 1817, sect. 33, cl. 3.

The division of the zillah into police jurisdictions,

1489. The several zillahs in those provinces were to be divided into compact police jurisdictions, including indiscriminately the estates of *huzoor tehsil*, landholders, and of muhals paying revenue through a tehsildar, as well as lakhiraj lands of every denomination held exempt from the police assessment. Reg. XIV. 1807, sect. 5, cl. 1.

of two kinds; sudder, and mofussil.

1490. The police jurisdictions are of two descriptions. First, such as are established at the station where the civil court is held, and which are to be denominated the "sudder police jurisdictions." Secondly, such as are established at any place not being the station

where the civil court is held, and which are to be denominated the "mofussil police jurisdictions." Reg. XIV. 1807, sect. 5, cl. 2.

Sudder police jurisdiction to comprise what, with what establishment.

1491. The sudder police jurisdiction was to comprise the city or town, at which the civil court was held, together with such part of the suburbs and environs, as it was judged expedient to place under the superintendence of a cutwal with an establishment of darogahs, jemadars, burkundazes, and chokeedars or other watchmen, proportionate to the extent and population of the jurisdiction. Reg. XIV. 1807, sect. 6, cl. 1.

Mofussil police jurisdiction to comprise what, with what establishment.

1492. The mofussil police jurisdictions were respectively to comprise a considerable town or gunj, at which the superintendent of the jurisdiction was to be stationed, together with such part of the adjacent country as it might be deemed advisable to place under the superintendence of a darogah, with an establishment of jemadars, burkundazes, chokeedars or other watchmen, proportionate to the extent and population of each jurisdiction. Reg. XIV. 1807, sect. 6, cl. 2.

Not to exceed 10 coss square.

1493. In proposing a distribution of mofussil police jurisdictions, and the requisite establishments for them, the magistrates were required to attend as much to the population, and number of towns, villages, and other inhabited places, as to the extent of country; but the latter was in no instance to exceed ten coss square for any one police jurisdiction, unless peculiar local circumstances appeared to require it. Reg. XIV. 1807, sect. 6, cl. 3.

Subordinate division and establishment in certain cases.

1494. If the principal town or gunj, included in any mofussil police jurisdiction from its extent and population appeared to require a cutwalee establishment; or if it appeared expedient in any instance to include more than one considerable town or gunj within a mofussil police jurisdiction, and to station a naib darogah, or jemadar, with a subordinate establishment of burkundazes, chokeedars or other watchmen, at the town or gunj, not the station of the darogah of the jurisdiction, the magistrate was to propose such an arrangement. Reg. XIV. 1807, sect. 6, cl. 4.

The numbers, names, limits, and establishments, not to be changed.

1495. The police jurisdictions were to be numbered, and named after the places at which the superintending officers were stationed. The names, numbers, limits, or establishments of such several jurisdictions are not to be changed without the previous sanction of government. Reg. XIV. 1807, sect. 7, cl. 1.

Government may make any alteration.

1496. It is at all times competent to government to order the discontinuance of any police jurisdiction, or establishment, which appears unnecessary; or any alteration therein, which is deemed expedient. Reg. XIV. 1807, sect. 7, cl 2.

The division of the sudder police jurisdiction into wards.

1497. The city or town constituting with its suburbs the sudder police jurisdiction was to be divided into wards; each ward to be guarded by a police darogah with a jemadar and an establishment of burkundazes, chokeedars, or other watchmen; the several darogahs to be under the superintendence of a cutwal, and the whole under the immediate control of the magistrate. Reg. XIV. 1807, sect. 11, cl. 2.

Watchmen how to be stationed therein.

1498. The chokeedars and other watchmen are to be stationed by the cutwal, as the magistrate directs; and are particularly to watch the entrances of streets and passages, places where spirituous liquors are sold, and any places where numbers of people occasionally

assemble; or where from any circumstances there is reason for special vigilance to prevent a breach of the peace, or to apprehend the persons by whom it is broken. Reg. XIV. 1807, sect. 11, cl. 3.

Rules for patroling the wards throughout the night.

1499. The jemadars of the several wards with half of the establishment of burkundazes, and the darogahs with the other half of their establishments, are to patrol their respective wards without intermission; the one from sunset until 12 o'clock at night; the other from 12 o'clock at night till daylight. The patrols are to move about with as little noise as possible, that thieves and other disorderly persons may not be apprized of their approach. The patrols of the several wards, and such part of the stationary watchmen as the cutwal appoints, are to be furnished with a singhara or horn, which they are to sound when they meet with robbers or other persons guilty of a breach of the peace, and have occasion to give the alarm to each other, or to the inhabitants of the ward, that they may co-operate for the apprehension of the offenders. The cutwal is to be careful that the stationary watchmen, and the darogahs and their officers perform the essential duties prescribed in this clause regularly and properly; and is to report to the magistrate every instance in which they are guilty of negligence or misconduct in the discharge of them. Reg. XIV. 1807, sect. 11, cl. 4.

Patrols to be furnished with horns.

Duties of the mohulladar and mohulladarin of each ward.

1500. To assist the darogahs in obtaining the earliest intelligence of any robbers, or other offenders, who are concealed or have taken up their residence within their respective wards, the mohulladar and mohulladarin of each ward are to be subject to the orders of the darogah; to whom they are to convey immediate information of any offenders who are found in their respective wards. It is also the duty of the bhutiarehs, or other persons in charge of the public saraees, and of the ghat manjees, to deliver in to the cutwal's office, or to the darogah of the ward, daily reports of the arrival and departure of travellers, and of all persons of suspicious appearance. Reg. XIV. 1807, sect. 11, cl. 5.

Duties of the bhutiarehs, &c.

Private watchmen.

1501. All private watchmen entertained by individuals for guarding their houses, shops, or other premises, within the cutwalee jurisdiction, are required to act in concert with the officers of police in maintaining the peace; and are declared subject to the orders of the cutwal, and of the darogahs of their respective wards, in all matters relative to the police. If such watchmen are found deficient in performing the duties required of them, they are to be dismissed at the requisition of the magistrate, who is also empowered to see that none but proper persons are appointed in their stead. Reg. XIV. 1807, sect. 11, cl. 6.

Charge of police may be entrusted to tehsildar, or landholder, by government.

1502. Government may grant the full powers of a mofussil police darogah to a tehsildar, landholder, or farmer; or may commit the charge of the police to any other person as a temporary arrangement. Reg. XIV. 1807, sect. 17.

Magistrate may report if he wishes for such special arrangement.

1503. The magistrates are to report for the information of government any instances within their respective jurisdiction, in which they think it advisable to adopt any special arrangement under the above provision, stating fully the circumstances which require it, and the particulars of the arrangement proposed. Reg. XIV. 1807, sect. 18.

City police to be generally guided by Reg. XX. 1817.

1504. The cutwals and other police officers appointed in the cities and towns are to be guided, in their discharge of the general duties of the police, by the rules prescribed in

this regulation for the guidance of the darogahs of police, as far as the same are applicable, and in the special police duties of the cities and towns by the rules in force which relate to the police of the cities and towns. Reg. XX. 1817, sect. 34.

Tehsildars.

Powers of darogah may be vested by government in tehsildars in N. W. Provinces.

1505. It is competent to government to authorize any tehsildar or tehsildars [in the ceded and conquered provinces] to exercise the powers vested by the existing regulations in darogahs of police, and to determine the local limits of their police jurisdictions, within which all officers of police, including the thana and village police establishments, are to be subordinate to and subject to the control of the tehsildar in his capacity of chief police thanadar. Reg. XI. 1831, sect. 2.

In such case the darogahs become naib darogahs.

1506. Whenever the above arrangement has effect, the individuals then filling the office of darogah are to be designated naib darogahs, and they are to be guided in every respect by the rules laid down in sect. 6, Reg. XX. 1817,* the thanas being considered as outposts; and the powers and duties of the police officers employed at outposts, as defined therein, are to be held applicable to such naib darogahs. Reg. XI. 1831, sect. 3.

* *v. para.* 1511 *et seq.*

In such cases rank and functions how to be settled.

1507. The darogah and tehsildar are competent, with the sanction of the magistrate, to make such disposition of the existing police establishments, in modification of sect. 4, Reg. XX. 1817 [which defines the relative rank and functions of police officers], as is most conducive to the public interests; but, with this exception, the whole of the rules contained in the above regulation are to be held applicable to the tehsildars, who are constituted police officers under this regulation. Reg. XI. 1831, sect. 4.

Reg. XX 1817 is applicable to tehsildars in such cases.

In such cases the tehsildary establishments may be employed in matters of police; but police officers are not to be employed in revenue matters.

1508. The tehsildars, who are vested with the powers of darogahs under this regulation, are authorized to employ, when necessary, in aid of the regular police establishments, any chuprassies or other persons entertained on their fixed tehsildary establishments; and revenue officers, when so employed, are to be guided in the discharge of their police duties by all the rules in force for the guidance of police officers. But the fixed thana establishments are not to be employed in the collection of the land revenues, or in other revenue duties, except in cases of distraint for arrears of rent or revenue, or such other occasions as by the regulations in force are now authorized. Reg. XI. 1831, sect. 5.

Such arrangements how to be publicly notified.

1509. Whenever the government sees fit to carry into effect this arrangement in any district or part of a district, a statement is to be drawn out specifying the number and extent of the several police and revenue jurisdictions, the names and numbers of the officers attached to them, and the head quarters or thanas, and the outposts of the several divisions: this statement is to be drawn out in English and the vernacular dialects, and suspended in a conspicuous place in the cutchery of the collector and magistrate at the sudder station, and is to be published by proclamation throughout the district. Reg. XI. 1831, sect. 6.

In such cases all reductions which can be effected are to be reported.

1510. In any district in which the provisions of this regulation are carried into effect, it is the duty of the magistrate and collector to report to government, from time to time, any reductions which can be effected in the existing police establishments:—and on the occurrence of any vacancy in the office of naib darogah, such office is not to be filled up, but its duties are to devolve on the jemadar of the outposts, or such other subordinate officer as is deemed by the magistrate and collector competent thereto, whether belonging to the establishment of the tehsildar or to the original police establishment. Reg. XI. 1831, sect. 7.

Outposts.

Magistrates may station at outposts a portion of the thana establishment.

1511. The magistrates are authorized to exercise the power of stationing any portion of their police thana establishments (not exceeding one-third of the entire establishment) at any chokee, village, ghaut, highway, or other place within the limits of the thana to which such establishments appertain, reporting always the particulars, as well as the grounds of the arrangement, for the information of the superintendent of police. Police officers so stationed are to be guided by the following rules. Reg. XVII. 1816, sect. 8, cl. 1. Reg. XX. 1817, sect. 6, cl. 1.

Duties of officers so stationed.

1512. Jemadars, burkundazes, and other police officers stationed at outposts, or subordinate chokees, are to act under the control of the darogah or head police officer of the thana, to which they are attached; and are to afford their aid for the prevention of crimes, the apprehension of criminals, and generally for the preservation of the peace, and are to report to the thana all occurrences relating to matters of police, which come to their knowledge. Reg. XVII. 1816, sect. 8, cl. 2. Reg. XX. 1817, sect. 6, cl. 2.

How far they may apprehend persons without a warrant from the magistrate or the darogah.

1513. The officers of police stationed at outposts are competent to apprehend, without a written charge or warrant, persons found in the act of committing a breach of the peace, or against whom a hue and cry has been raised, or who are detected with stolen goods in their possession, or who are liable to apprehension under the rules in force as proclaimed or notorious robbers, or vagrants, without any ostensible means of subsistence; but no person is to be arrested by the subordinate officers of police, except in cases of the nature above noticed, unless under the special warrant of the magistrate, or of the darogah of the thana to which the outpost is attached. Reg. XVII. 1816, sect. 8, cl. 3. Reg. XX. 1817, sect. 6, cl. 3.

Persons so apprehended are to be forwarded immediately to the thana.

1514. Persons apprehended by the subordinate establishments of police are to be forwarded immediately to the thana to which the outpost belongs, accompanied by an explanation of the circumstances of the case, and of the causes which have led to the apprehension of the prisoner. Reg. XVII. 1816, sect. 8, cl. 4. Reg. XX. 1817, sect. 6, cl. 4.

Landholders are not obliged to provide houses for such outposts.

1515. A magistrate is not authorized to call upon a zumeendar to provide a building for the residence of police officers stationed upon his estate under the above rules. Const. No. 1247.

Guard boats.

Annual report to be furnished regarding.

1516. Magistrates, who have guard boats under them, are required to report annually what services have been rendered by the boats employed under them, that whenever it appears they are useless at any station, they may be reduced or transferred to some other. Such reports are to state whether the boats have been instrumental in apprehending dacoits; whether owing to their vigilance that crime has in any instances been prevented; and generally whether robbery in the neighbourhood of their stations has comparatively ceased or diminished, from the dread of pursuit excited in the minds of the evil-disposed by their presence and known activity. C. O. No. 41 of vol. 1.

SECTION II.

OF THE RELATIVE RANK AND GENERAL FUNCTIONS OF POLICE OFFICERS.

General duties of darogahs, and their control over the subordinate thana officers.

1517. The darogahs are to exercise a general control over the mohurrirs, jemadars, and burkundazes attached to their respective thanas; it is the duty of a darogah or other officer of police in charge of a thana, to conform to all instructions he receives from the magistrate, to whom he is subordinate; to preserve the peace within the limits of his jurisdiction; to report to the magistrate all occurrences connected with the police which come to his knowledge; to prevent, as far as possible the commission of all criminal offences; to discover and apprehend offenders; to execute process and obey all orders transmitted to him by the magistrate; and to perform such other services as are prescribed in the regulations. Reg. XX. 1817, sect. 4, cl. 1.

Rank and special duties of the mohurrir.

1518. The mohurrir is to be considered the second officer at a thana; and, in the absence of the darogah from his station, is to exercise the powers vested in that officer by the provisions of this regulation. It is the special duty of the mohurrir to preserve the records of the thana, and to write the reports and other papers under the direction of the darogah. Reg. XX. 1817, sect. 4, cl. 2.

Rank and special duties of the jemadar.

1519. The jemadar is to be considered as the third officer at a thana, and in the absence of the darogah and mohurrir from the thana station, is to exercise the same powers as are vested in the darogahs by the provisions of this regulation. The jemadars, whether stationed at the thanas, or at outposts, are to act under the orders of the darogah of the division, and are to see that the burkundazes are in attendance at their posts; that their arms and accoutrements are kept in a state of efficiency; and that all prisoners and property brought to the thana are duly guarded during the time they remain under the custody of the police burkundazes attached to the station. Reg. XX. 1817, sect. 4, cl. 3.

Police officers generally to obey the orders of the superintendents of police, and of the joint and assistant magistrates.

1520. The officers of police are required to aid and support the superintendents of police, and the joint and assistant magistrates, to whom they are respectively subordinate, in the execution of any process issued by them under their official seals and signatures; also to furnish those officers with every information required from them, as well as generally to obey all orders issued to them by those officers, on pain, in case of neglect or failure, of being fined, suspended, or dismissed from office, according to the provisions established by the general regulations for the punishment of offences of that description. Reg. XX. 1817, sect. 4, cl. 4.

Seal to be used by police officers.

1521. All cutwals and police darogahs are to use a brass seal of office, an inch in diameter, and made after the form described in the margin, the name of the cutwalee or thana, and the name of the city or zillah in which it is included, being engraved on the surface of the seal. Reg. XX. 1817, sect. 5, cl. 1.

Burkundazes to wear a badge, arms, and uniform.

1522. The police burkundazes are to wear brass badges, engraved with the name of the police station, and of the district in which they are employed; and are to be armed with a spear, a sword, and a shield; or with a matchlock, sword, and shield; or with a spear and matchlock, as circumstances render expedient; they are also to be uniformly dressed in such manner as is prescribed by the superintendent of police. Reg. XX. 1817, sect. 5, cl. 2.

SECTION III.

OF CONCURRENT JURISDICTION OF POLICE OFFICERS.

Intelligence of heinous crimes to be sent to neighbouring thanas.

1523. Whenever a darogah receives intelligence of any murder, gang robbery, or other heinous crime, having occurred within his jurisdiction, the perpetrators of which have not been apprehended, he is to despatch immediate information of the occurrence to the neighbouring police darogahs, both in the district in which his thana is situated, and in the adjacent districts. Reg. XX. 1817, sect. 22, cl. 1.

Police officers may pursue offenders into other thanas or zillahs.

1524. The darogahs and other police officers are empowered, either under the warrant of the magistrate or without such warrant, to pursue persons charged with the crimes above-mentioned into the jurisdiction of other darogahs, whether subject to the same or any other magistrate; and the magistrates, darogahs, police officers, landholders, farmers, gomashtahs of villages, cultivators of land, and all other persons having authority or residing in the jurisdiction into which the offenders are pursued, are required to afford every assistance in their power to the pursuing officers for the apprehension of the offenders. Reg. XX. 1817, sect. 22, cl. 2.

But this concurrent authority is to be exercised by a police officer only when the offence was committed in his own jurisdiction, or when the offender was therein at the time the charge was preferred.

1525. It is to be understood however that this concurrent authority is to be exercised by the police officers only in those cases in which the crime has been committed within their own respective jurisdictions; or, in the event of the crime having been committed in any other jurisdiction, when the offender is actually within their jurisdiction at the time the charge is preferred to them; and it is not lawful for the darogah of one zillah or jurisdiction to issue a warrant for the apprehension of an offender, being or residing in another zillah or jurisdiction at the time of a complaint being preferred, for any crime not committed within the limits of his own jurisdiction. In such cases the complainant must apply in the first instance to the magistrate of the zillah, or to the darogah of the jurisdiction, in which the crime or misdemeanor has been committed, or in which the offender resides or is found. But should the complainant first prefer a written application to the darogah of another jurisdiction, such darogah is to record in his diary the name of the complainant, the nature of the charge, and the date on which the complainant has been referred to another darogah. The date and ground of such reference is also to be endorsed upon the application to be returned to the complainant. Reg. XX. 1817, sect. 22, cl. 3.

1526. Whenever the police officers employed under one magistrate apprehend offenders in the jurisdiction of another magistrate, in virtue of the powers vested in them by the preceding rules, they are immediately to deliver to the darogah of the police jurisdiction, in which the offenders are apprehended, a list of their names, and a statement of the crimes and misdemeanors with which they are charged; and the latter darogah is immediately to forward such list and statement to the magistrate to whose authority he is subject. Reg. XX. 1817, sect. 22, cl. 4.

Darogah how to proceed when he apprehends offenders without his own jurisdiction.

SECTION IV.

OF APPOINTMENT AND REMOVAL.

1527. A general register of all police establishments (whether permanent or temporary) which are entertained at the charge of government, is to be kept up by the superintendents of police for their respective jurisdictions, exhibiting the description, strength, distribution, and expense of all such establishments, entertained within the provinces dependent on the presidency of Fort William. Reg. XVII. 1816, sect. 2, cl. 1.

Superintendent to keep a general register of all police establishments,

1528. The superintendents of police are regularly to transmit to government, with their annual police reports, or as soon after the transmission thereof as is practicable, an abstract statement exhibiting a comparative view of the strength and expense of all descriptions of police entertained during the two preceding years in the several districts situated within their respective jurisdictions, together with a separate address, explanatory on the one hand of any temporary or local increase in such establishments which circumstances have rendered necessary, or suggesting on the other any further reductions in the strength of those establishments which the ameliorated state of the police, the progressive introduction of subsidiary police arrangements, or other circumstances appear to admit. Reg. XVII. 1816, sect. 3.

and to submit to government an annual abstract statement of the strength and expense of all descriptions of police.

1529. In order to enable the superintendents to furnish such annual report, the magistrates are to supply any information which they require, and are to conform to any suggestions of those officers in respect to the organization and management of such establishments, which are consistent with the tenor and spirit of the regulations. Reg. XVII. 1816, sect. 5.

Magistrates to furnish the superintendent with required information, and to conform to his suggestions.

1530. The magistrates are to exercise the power of appointing darogahs and other subordinate officers to the several police stations subject to their control; of removing them from one station to another; of suspending and of dismissing them from office in consequence of neglect, misconduct, or incapacity;—subject to the orders of the commissioner of circuit, or other officer vested with the powers of superintendent of police [*i. e.* now, the superintendent of police appointed under Act XXIV. 1837*], whose decision is to be final, unless government sees reason to issue special orders on any case brought to notice. Reg. XVII. 1816, sect. 7, cl. 1, modified by Reg. XI. 1831, sect. 8.

The appointment and removal of police officers is vested in the magistrate, subject to the control of the superintendent of police.

* *v. para.* 1471.

This control is in force throughout the N. W. Provinces.

1531. The above provision (for the control of appointments and removals) is applicable to the whole of the ceded and conquered provinces,—not being restricted to those districts in which tehsildary establishments are maintained under Reg. XI. 1831. Const. No. 736.

Grounds of removal to be recorded. Fit persons to be selected; and not to be removed without fault.

1532. The magistrates are required to record upon their proceedings the grounds upon which any native officers are removed by them under the above provision; and to select proper persons to fill all vacancies in the situations of such officers; and to continue in office the persons appointed, whether by themselves or by their predecessors, whilst they discharge the duties assigned to them with diligence and integrity. Reg. XVII. 1816, sect. 7, cl. 3.

Security to be taken from darogahs;

1533. No person is to be appointed a darogah without giving security for his appearance in the amount of 1000 rupees, himself in 500, and two responsible persons in 250 each. *Beng.* Reg. XXII. 1793, sect. 6. *Ced. Prov.* Reg. XXXV. 1803 sect. 24.

but not to be required in Bengal.

1534. Under the orders of government, the foregoing provision is not to be put in force in Bengal. C. O. Sup. Pol. L. P. No. 18 of 1845.

Persons appointed must be efficient.

1535. Persons past the prime of life are not to be admitted into the police force except when some peculiar advantage is to be gained from the appointment. C. O. Sup. Pol L. P. No. 18 of 1840.

Darogahs may not nominate to subordinate appointments.

1536. The darogahs are not to nominate individuals to supply vacancies in their subordinate establishments, except in instances in which they are especially directed to do so by the magistrate. Reg. XX. 1817, sect. 3, cl. 2.

Sunnud to be furnished to each officer on appointment.

1537. The magistrate is to furnish to each police officer on his appointment a written document, under his official seal and signature, specifying the station to which the officer is appointed, and requiring him to perform the duties of it in conformity with the regulations. Reg. XX. 1817, sect. 3, cl. 3.

Relationship of the person nominated to the omlah to be noted.

1538. When sending up to the superintendent of police the nomination of a police officer for approval, the magistrate is to state whether he is related or connected in any way with the omlah of his own or of the sessions court. C. O. Sup. Pol. L. P. No. 19 of 1840.

Report of appointment to be forwarded for confirmation.

1539. Magistrates are to appoint police officers only to act, until they have obtained the sanction of the superintendent; and a report on the subject is to be invariably sent without delay for the orders of that officer. C. O. Sup. Pol. L. P. No. 20 of 1838.

Report of dismissal to be forwarded for confirmation.

1540. The magistrate is to send to the superintendent of police, without delay, a report for confirmation whenever he thinks it expedient and proper to dismiss any police officer above the grade of burkundaz. C. O. Sup. Pol. L. P. No. 1 of 1838.

Monthly returns of dismissals and appointments.

1541. Monthly returns are to be furnished by the magistrate to the superintendent of police of the dismissals and appointments of police officers in the form No. 6 of appendix F, in addition to the reports made to him for his sanction. C. O. Sup. Pol. L. P. No. 1 of 1839.

1542. All deaths, resignations, removals, and appointments in the office of a cutwal or darogah of police, are to be communicated by the magistrates to the superintendents of police, in such form as the superintendents deem convenient and proper; in order, not only that the registers of police establishments may be kept correct, but that any cutwal or darogah who has been dismissed from his office on conviction, before the sessions court or the nizamut adawlut, of corruption or of any other criminal offence, declared to be punishable by dismission from office, may be precluded from being again employed in any similar situation elsewhere. Reg. XVII. 1816, sect. 9, cl. 1.

Deaths, resignations, removals, and appointments to be noted to the superintendent,

1543. If any case of this nature comes under the observation of the superintendents of police, it is their duty to communicate the requisite information to the magistrate, in order that the darogah, or other police officer, who has been appointed under such circumstances, may be immediately removed from his situation. Reg. XVII. 1816, sect. 9, cl. 2.

who is to take care that improper persons are not appointed.

1544. The removal of a police officer is not to be considered to preclude his future appointment in any other situation in the public service, for which he is deemed duly qualified, except in the cases of conviction described in the first clause of this section. Reg. XVII. 1816, sect. 9, cl. 3.

The removal of a police officer does not prohibit his being again employed in the service of government.

1545. A session judge holding a jail delivery, or the court of nizamut adawlut, may order the dismissal of any native officer convicted of a criminal offence declared punishable by dismission from office; or, though not so expressly declared, if the conduct of such native officer appears from any proceeding before the sessions court or nizamut adawlut, to be such as to require his removal from the public situation held by him. On the same being notified to the magistrate, or other European public officer, under whom the native officer so dismissed has been employed, it is the duty of the magistrate, or other European officer, to take measures for the appointment of a successor to the vacant office in conformity with the regulations. Reg. XXV. 1814, sect. 15. Reg. XVII. 1816, sect. 7, cl. 8.

The courts of sessions and nizamut adawlut may order the dismissal of any native officer whose conduct appears, from any proceeding before them, to require his removal.

1546. Under the above provisions, in cases before the sessions court as trials, the session judge is competent to order the dismissal of police officers convicted of any offence, which appears to require their removal from public office. Const. No. 1328.

1547. Police officers of every denomination, as well as all other native officers in the service of government, are liable to removal from the public trusts committed to them, without proof of any specific act of criminality, whenever there is sufficient reason to believe them incapable, or neglectful of their prescribed duties, or in any respect unworthy of public confidence. Reg. VIII. 1809, sect. 5, cl. 5.

All native officers are liable to removal without proof of any specific act of criminality.

1548. The magistrate is authorized, in addition to the general powers vested in him by the regulations for the punishment of any specific crime or misdemeanor, to fine any officer of police under his authority for neglect of duty in a sum equal to one month's salary; and to cause the same to be levied by a stoppage of the fixed allowance payable to such officer. Reg. VIII. 1809, sect. 5, cl. 5.

Magistrate may fine for neglect of duty one month's pay.

1549. As a specific provision is made by the above clause for the punishment of neglect of duty by officers of police, the magistrate is restricted in such cases to the limitation of punishment therein defined; but if any distinct misdemeanor beyond neglect of

But the fine cannot be greater, and he cannot inflict imprisonment, except in case

of a distinct misdemeanor.

duty is established, the case of course falls within the magistrate's discretion under the general powers vested in him by sect. 19, Reg. IX. 1807. Const. No. 244. C. O. Sup. Pol. L. P. No. 8 of 1840.

Remarks of the superintendent of police on the punishment of police officers.

1550. Dismissal from office is not to be resorted to as a punishment in the police, excepting for offences of a serious nature, or continued acts of neglect, inefficiency, and misconduct.(a) The magistrate is to keep a register, in the form No. 18 of appendix B, inserting therein the minor punishments he has occasion to impose upon his police officers. These should be reprimands, fines under the above provisions, and temporary deprivation of office not exceeding 6 months. If it appears that a repetition of these minor punishments is insufficient to produce activity, regularity, or a proper attention to their duties on the part of any officers, dismissal must then take place; and the papers of the case, in which this last punishment is ordered, are invariably to be sent to the superintendent of police, together with an extract from the register shewing to what punishments, and for what offences, the dismissed officer has been previously subjected. In all cases where punishments are imposed on a police officer, the reasons for them, and the mode of conduct he should in similar cases adopt, are to be pointed out to him in plain but courteous terms. Of course cases sometimes occur, where immediate dismissal without any intermediate punishment must follow the offence. C. O. Sup. Pol. L. P. No. 16 of 1840.

The reasons of punishment are always to be explained.

(a) "The greatest bane to the force at present, and the bar to the entry into it of respectable men, is the extreme uncertainty of the tenure of office, and the degradation to which the officers have been in too many instances subjected by dismissal, heavy pecuniary fines, and imprisonment, in cases which really did not call for such severe measures. The first step to restore to the police some degree of self-respect is to abstain from all punishments, which degrade the feelings of those punished without producing any good effect on their fellow officers. Dismissal has been so common that magistrates have almost ceased to consider it as forming any kind of disqualification for future employment. It has lost its effect as a punishment or example, and beyond a temporary degradation is not held in terror by those holding offices in the police."—C O. Sup. Pol. L P. No. 16 of 1840.—With this order the superintendent circulated a register (subsequently continued) of police officers "dismissed for offences which would seem to render them unfit for future employment without great attention on the part of the local magistrates to the circumstances under which they consider them qualified for a further trial." This register is not intended as a declaration that the persons entered therein are incapable of again serving the government in any capacity; but to enable the magistrates to exercise a sound discretion in the re-nomination of those persons: if, therefore, a magistrate desires to employ any of those persons, he is to state his reasons for selecting him in preference to others, upon whose character there is no slur. Again, in C. O. No. 3 of 1845, the superintendent observes that "the increase made to the salaries of all darogahs, and the creation of two higher grades, which all who conduct themselves properly may reasonably expect to gain, must have a great effect in raising the character of the police, and procuring more respectable persons as candidates for vacant situations; but much of the benefit to be derived from this measure must also depend on the treatment shown to the officers by their immediate superiors. The police officers should not be harassed by fines, and summonses to appear before the magistrate on petty or insufficient occasions; errors should be pointed out to them in terms not likely to wound their self-respect; and whilst all attempts at oppression or corruption, for which there can be now no excuse, are checked, police officers should be encouraged in the proper performance of their duties by a degree of courtesy and consideration evinced on the part of the magistrate towards all those who honestly endeavour to carry out the objects of their appointment." The Court of Directors concur in these observations, and remark that "heavy fines imposed upon native officers whose allowances are barely, if at all, sufficient for their subsistence, must have the effect of driving them to acts of corruption and extortion; and the disregard of their just rights and reasonable feelings by their official superiors must degrade them in their own estimation, and in that of the public, and must deter men of respectable character from holding situations in which they are exposed to such hardships and disgrace."

1551. As a general rule rewards ought to be given only in very particular instances to the officers of police, who should be induced to look forward to promotion for acts of good conduct. In cases where great personal courage, vigilance, or tact is exhibited, a report should be made to the superintendent of police before the admission of the officer to a reward. C. O. Sup. Pol. L. P. No. 13 of 1842.

Distribution of rewards.

1552. The magistrate is to keep in a book in the English and native languages a register of police officers deserving of promotion, in the form No. 17 of appendix B, in order to hold out as an encouragement to them, that good conduct on their part will be noticed and meet with reward. A similar register is kept by the superintendent of police; and the magistrate is to forward to him for record therein a transcript of every entry, which he makes in his register. The superintendent wishes that all promotions in the police should be made from amongst those entered in these registers as deserving of reward. C. O. Sup. Pol. L. P. No. 2 of 1840.

Register to be kept by the magistrate of police officers deserving of promotion.

1553. The superintendents of police are competent, in the same manner and to the same extent as local magistrates, to impose fines upon any cutwal, police darogah, or other subordinate officer of the police establishments stationed within the limits of their respective jurisdictions. Reg. XVII. 1816, sect. 11, cl. 1.

Power of superintendent of police to fine police officers.

1554. The superintendents of police are likewise competent to suspend from office any cutwal, darogah, or other subordinate officer of the police of their respective jurisdictions, during any inquiry which they judge proper to institute in regard to the conduct of such officer, and also for neglect, or failure to furnish information, or to obey orders issued to them by the superintendents of police. Reg. XVII. 1816, sect. 11, cl. 2.

and to suspend them;

1555. Whenever the superintendents of police deem it necessary, in the discharge of their duties, to fine or suspend any such officer, they are to communicate an extract from their proceedings, with a copy of the order passed by them to the local magistrate, who, in pursuance of cl. 1, sect. 5, Reg. III. 1812*, is to proceed to realize the fine in the same manner as if it had been imposed by himself, or to carry into effect the superintendent's order of suspension, and to supply the vacancy occasioned thereby. Reg. XVII. 1816, sect. 11, cl. 3.

and he is to certify such sentences to the magistrate for execution.

* *v. para.* 1464.

1556. The superintendent of police is fully competent, on sufficient ground, to remove of his own accord any of the officers, whom he is competent to remove on reference from the magistrate. Const. No. 62.

Superintendent of police may remove officers of his own accord.

1557. All appeals from the awards of magistrates against police officers for breach of duty as such, lie exclusively to the commissioners (superintendents of police), who are responsible for the good order of the police. But this does not remove cases of committal of police officers for bribery from the session judge to the superintendent of police; and appeals in cases of that nature lie to the former. C. O. No. 240 of vol. 2. Const. No 1134.

Appeals from awards of magistrates against police officers lie to the superintendent;

1558. The appeals of parties seeking redress from orders of magistrates dismissing them from their situations, such orders not being part of the sentence passed in any criminal trial, cannot be heard by the session judge, but lie, under the law, to the commissioner. C. O. No. 35 of vol. 3.

and cannot be heard by the session judge.

All officers may appeal without reference to the amount of their salary.

* *v. para.* 1530.

1559. As the terms of sect. 8, Reg. XI. 1831* include all police officers of whatever denomination without reference to the amount of their salary, appeals from the orders of the magistrate may be received by the commissioner of circuit from any police officer, whether his salary is above or below the sum of ten rupees. Const. No. 907. C. O. No 142 of vol. 2.

The session judge cannot interfere with the orders of the magistrate regarding the appointment or removal of police officers.

1560. It is not competent to a session judge to interfere with any order passed by a magistrate, or joint magistrate, regarding the appointment, suspension, or removal of any police officer, the revision of which is entrusted by section 4 of this Act to the superintendent of police. Act XXIV. 1837, sect. 5.

The orders of the superintendent in such cases are not open to revision by the nizamut adawlut.

1561. The orders of the superintendent of police in regard to the appointment, suspension, or removal of a police officer of a magistrate, or joint magistrate, passed under the above provisions, are not open to revision by the nizamut adawlut Act XXIV. 1837, sect. 6.

Appeals from officers, employed in both the revenue and police departments, lie to commissioner.

1562. Appeals from orders for the removal of police officers on the establishment of the magistrate and collector, who are also employed in the revenue department, lie to the commissioner, and not to the session judge. So also, in regard to the removal of native officers in whom revenue and police functions are combined, the appeal would lie in either case to the commissioner; unless a regular criminal trial has been held, in which case it would lie to the session judge. C. O. No. 177 of vol 2.

Appeals may be forwarded by dawk;

1563. Commissioners may receive and act upon petitions from suspended officers forwarded by the dawk, provided they are written on stampt paper. Const. No. 344.

or may be presented to the magistrate, who is to forward them with the papers of the case, if written on stampt papers and presented within the proper period.

1564. Police officers dissatisfied with the orders of a magistrate are permitted to present their petitions of appeal to the magistrate, if written on the proper stampt paper; and, if presented within the usual period allowed to appellants, the magistrate is bound to forward the appeal with the papers of the case for the orders of the superintendent of police. In case the officer suspended or dismissed does not present his petition of appeal to the magistrate within the period allowed, the magistrate is to refuse to accept it, and is to refer the officer to a personal appeal at the office of the superintendent. C. O. Sup. Pol. L. P. No. 20 of 1838.

If the appeal is forwarded by dawk, it must be accompanied by copies of the proceedings appealed against.

1565. If the course prescribed in the above order is not adopted by police officers appealing, they must forward to the superintendent with their petitions of appeal copies of the proceedings ordering their dismissal, without which their petitions will not be attended to. One of the two courses referred to must be followed. C. O. Sup. Pol. L. P. No. 24 of 1844.

Police officers guilty of corruption may be prosecuted in the civil or criminal court.

1566. If the darogah of a jurisdiction, or any officer under his authority, is guilty of corruption, extortion, or oppression, or commits any act repugnant to this regulation, he is liable to be committed(*a*) by the magistrate to take his trial for the same before the sessions court, or to be prosecuted for damages in the civil court, at the option of the party injured. *Beng.* Reg. XXII. 1793, sect. 22. *Ben.* Reg. XVII. 1795, sect. 20. *Ced. Prov.* Reg. XXXV. 1803, sect. 21. C. O. No. 35 of vol 1.

(*a*) A magistrate is of course competent to pass sentence of punishment on his own authority, to the extent of the powers vested in him by regulations passed subsequently to those cited above, if he considers such punishment adequate to the degree of criminality of the accused. See Const. No. 237. The subject of corruption, &c. will be found more fully treated of in a subsequent part of the work.

1567. A magistrate is competent, whenever he sees reason to suspect any charge of corruption or extortion preferred against his police officers to be false and unfounded, to call on the person preferring the charge to give security for his attendance until the final decision of the case. Const. No. 731.

In such cases the prosecutor may be required to give security for his attendance.

1568. Any police darogah, mohurrir, or jemadar, applying for leave of absence, is to name an individual for the approval of the magistrate to officiate for him during his absence; and the person, who is appointed to act, is to receive, during his absence, the entire allowances of the police officer for whom he officiates, or such part thereof as the magistrate, in each instance, judges it proper to fix. The burkundazes are to submit their applications to the magistrate through the darogahs; and the persons nominated to act during their absence are to receive the entire salaries of the individuals for whom they officiate, or such part thereof as is fixed by the magistrate. In the event of the absentee's exceeding the period of his leave, the darogah is to report the circumstance for the orders of the magistrate. Reg. XX. 1817, sect. 7, cl. 1.

Rules for leave of absence; the appointment and salary of persons officiating.

1569. Whenever a police darogah is suspended from office, and it is found necessary to appoint an acting darogah, the latter is to receive the full salary of the office whilst he is so employed. If the darogah is acquitted of the charge against him, the magistrate, or sessions court, before whom the trial is held, is to report for the consideration and orders of government, whether the darogah appears to be entitled to receive the whole or any part of the salary of his office for the time of his suspension. C. O. No. 51 of vol. 1.

Acting darogah to receive full salary.

Suspended darogah, if acquitted, may be paid back salary.

1570. The above order is not strictly applicable to the case of a person holding the office of a police darogah, and receiving his salary as such during his temporary appointment to the charge of another contiguous thana, while the darogah of the latter is under suspension. But if any additional allowance appears proper, in consideration of the additional duty, it should in the first instance be paid out of the salary of the suspended darogah, subject to the provision, given above, for cases of ultimate acquittal: and in such cases the magistrate appointing the officiating darogah is to regulate the amount of the allowance to be received by him, according to the extent of the trust, and the additional duty to be performed. C. O. No. 198 of vol. 1.

Arrangement to be made, if the darogah of one thana is put in temporary charge of another during the suspension of the darogah of the latter.

1571. Any extra expenses occasioned by the neglect of a superior court's order, directing the restoration of a native officer to office, are to be retrenched from the allowances of the person by whose fault the restoration has been delayed after receipt of orders to that effect. C. O. No. 254 of vol. 1.

Extra expenses occasioned by delay of magistrate to obey orders of restoration.

1572. The magistrate of Burdwan was censured for arresting a police darogah of Beerbhoom, while in the execution of his duty in serving a warrant issued to him by the magistrate of the latter district; and was informed that he should have postponed requiring the darogah's attendance, until he had completed the duty on which he was deputed by his immediate superior. Const. No. 851.

Police officers of one zillah are not to be arrested in another while in the execution of their duty.

1573. Writs for the apprehension of the person, or for requiring the personal attendance of police officers under civil processes, are to be issued through the magistrate. This rule does not of course apply to notices or proclamations not requiring personal attendance,

Civil writs for the apprehension, or personal attendance of police officers, are to

be served through the magistrate.

or to processes which give the party the option of appearing in person or by vakeel. C. O. No. 203 of vol. 3.

Proceeds of property of deceased police officers may be remitted by collectorate drafts.

1574. The magistrates in the lower provinces are authorized to remit by collectorate drafts the proceeds of property belonging to deceased police officers when dying at a distance from their homes. C. O. Sup. Pol. L. P. No. 16 of 1844.

Travelling allowance of police darogahs.

1575. A police darogah especially deputed to make local enquiries in a thana not immediately under him and distant from his own, may be allowed travelling charges; but it is to be distinctly understood that this indulgence is not to extend to cases in which darogahs follow criminals into other thanas than their own in the ordinary course of duty. On extraordinary occasions, however, of the latter description where darogahs have to pursue criminals for days together through one or more districts, the superintendent is authorized to pass their bona fide travelling expenses. Great caution is to be observed in the deputation of darogahs to other thanas, and such a measure should be adopted only in peculiar and important cases. C. O. Sup. Pol. L. P. No. 3 of 1846.

Deputation of darogahs to other thanas.

SECTION V.

OF THE DEPUTATION OF BURKUNDAZES TO THE SUDDER STATION.

Burkundaz despatched to magistrate's court is to be provided with a certificate,

1576. Whenever a burkundaz is despatched to the magistrate's court, the jemadar, or other police officer, by whom he is despatched, is to deliver to him a certificate, showing the name of the burkundaz, and the date and time of his despatch, agreeably to the first three columns of the form No. 1 (No. 11 of appendix C). Reg. XX. 1817, sect. 7, cl. 2.

which is to be presented to the nazir, who is to report any delay;

1577. On the arrival of the burkundaz at the sudder station, he is to proceed to the nazir of the foujdaree court, who is to insert in the fourth column of the paper the date and hour of his arrival; and, in the event of an unnecessary delay appearing on comparing the date of his despatch from the thana with that of his arrival at the sudder station, is to report the circumstance to the magistrate. Reg. XX. 1817, sect. 7, cl. 3.

and so, on his departure from the sudder station.

1578. On the departure of the burkundaz from the sudder station, he is again to proceed to the foujdaree nazir, who is to note in the fifth column the date and time of his departure; and on his arrival at the thana station, the certificate is to be delivered up to the darogah, mohurrir, or jemadar, who, in the event of the burkundaz having loitered on the road, is to report the particulars for the orders of the magistrate. Reg. XX. 1817, sect. 7, cl. 4.

Police officers bringing in defendants and witnesses are not to be allowed to remain in attendance at the cutcherry.

1579. Police officers bringing in witnesses or defendants should not be allowed to remain in attendance at the cutchery, while the examinations of such persons are being taken; as it interferes with their proper duties; and as their object is frequently to see that the witnesses and others adhere to the story, which they have been previously compelled or instructed to state at the thana. C. O. Sup. Pol. L. P. No. 10 of 1846.

SECTION VI.

OF CHOKEEDARS.

At sudder stations.

Rules for the establishment of chokeedars at sudder stations.

1580. The following rules are in force in the cities of Dacca, Patna, and Moorshedabad, and at the several stations at which the magistrates ordinarily reside throughout the provinces immediately dependant on the presidency of Fort William, as well as the several towns at which the joint magistrates are stationed in the lower provinces. Reg. XXII. 1816, sect. 1.

These rules are applicable only to sudder stations:

1581. No tax is to be levied either by the magistrates or darogahs, on account of the chokeedaree establishments, except at the stations and in the mode prescribed by Reg. XXII. 1816; unless such establishments have been introduced and maintained with the free will and consent of the inhabitants, the withdrawal of which might endanger the security of their property. C. O. No. 87 of vol. 2.

and do not apply to village chokeedars.

1582. The above order was intended merely to prohibit the introduction of the sudder chokeedaree system into other than sudder towns, and has properly no reference to the common village watch which has always existed in the country, and which the zumeendars are bound by the provisions of sect. 21, Reg. XX. 1817 to support. Const. No. 608. C. O. Sup. Pol. L. P. No. 4 of 1843.

Villages are not to be assessed for the establishment of chokeedars.

1583. The assessing the inhabitants of villages for the support of a village police establishment of chokeedars is authorized by no regulation, and is consequently illegal. The magistrate must confine his interference with the chokeedars paid by the people to those cases, in which he is authorized to interfere by the existing regulations. Const. No. 655.

Nomination, appointment, and maintenance of such chokeedars.

1584. All chokeedars appointed in aid of the police in the cities of Dacca, Patna, or Moorshedabad, or at the stations at which the zillah magistrates ordinarily reside within the provinces immediately dependant on the presidency of Fort William, or at the several towns at which joint magistrates are stationed in the lower provinces, are to be nominated, appointed, and maintained by the respective communities for whose benefit and protection such subsidiary police establishments are required; and which communities are declared chargeable with the expence of maintaining such chokeedars, subject to the limitations and provisions following. Reg. XXII. 1816, sect. 3.

Salary.

1585. All such chokeedars are to be paid in money only, and are to receive an allowance for their support, the amount of which is to be determined at the discretion of the magistrate, with reference to the usual wages of labor, not however exceeding 3, or being less than 2 rupees per mensem. Reg. XXII. 1816, sect. 4.

Government may regulate it up to 4 rupees.

1586. Government is competent to authorize the payment to chokeedars of a higher allowance than that specified above, provided that such allowance in no instance exceeds 4 rupees per mensem. Reg. VII. 1817, sect. 2, cl. 1.

Superintendent of police to report special cases.

1587. It is the duty of the superintendents of police to bring under the notice of government all instances, in which it appears expedient, on a consideration of the usual wages of labor or of other special or local circumstances, that the chokeedars should receive a higher allowance than 3 rupees per mensem. Reg. VII. 1817, sect. 2, cl. 2.

Number of chokeedars to be maintained.

1588. The number of chokeedars to be maintained in the several cities and stations aforesaid is likewise to be determined at the discretion of the magistrate, or joint magistrate, with reference to the known or apparent condition of the inhabitants, not however exceeding in any instance the average number of 2 chokeedars to every 50 shops, or occupied habitations. Reg. XXII. 1816, sect. 5.

Aggregate collections how to be regulated.

1589. The aggregate sum to be collected monthly from the inhabitants of such cities or stations, to provide for the payment of their respective chokeedars, is not to exceed the average rate of 2 annas per mensem from the proprietor, or (in the absence of the proprietor) from the principal occupier of each shop or habitation. Reg. XXII. 1816, sect. 6.

Magistrates may exempt any mohulla from the maintenance of chokeedars.

1590. The magistrates may exercise a discretion in exempting the inhabitants of any mohulla from the maintenance of chokeedars, in which either from their poverty or from the scanty population of the mohulla it does not appear necessary to entertain such establishments. Reg. XXII. 1816, sect. 7.

A punchaet is to be appointed for each mohulla, who are to regulate but not to realize the assessment.

1591. The magistrate is to nominate and appoint five respectable inhabitants (being substantial householders) of each mohulla of the city, or other convenient division of the town, who are to constitute a punchaet for the purpose of regulating and of annually revising and amending the rates of assessment to be levied from the inhabitants for the maintenance of their respective chokeedars, as well as for nominating and appointing such chokeedars subject to the approval of the magistrate; but the persons composing the punchaet are not to be required to realize such assessments, or to perform any duties which are not expressly specified in this regulation. Reg. XXII. 1816, sect. 9.

Sunnud of appointment of punchaet, with specification of their duties; viz.

1592. The punchaet so constituted are to receive a sunnud of appointment, under the official seal and signature of the magistrate, with a specification of the duties to be performed by them, according to the form and tenor prescribed as follows:—

"Whereas you (names of persons) inhabitants of (name of mohulla of city or town) are hereby constituted and appointed a punchaet to regulate and fix the rates of assessment to be levied monthly from the several householders of the said (mohulla or town) for the payment of the chokeedars entertained for their protection, and to nominate and appoint such chokeedars under the provisions following:

to regulate assessment;

Article 1*st*.—You are to regulate and determine the rates of assessment to be levied from the proprietor, or principal occupier, of each shop or habitation within the limits of the aforesaid (mohulla or town) for the payment of the wages of the chokeedars. You are to regulate the amount payable by each individual as equitably as may be practicable, with reference to the known or apparent condition and circumstances, and the value of property to be protected, of each person assessed. Provided that no individual (whatever be his means or condition in life) be subjected to a higher rate of assessment than two rupees [by sect. 2, Act XV. 1837], nor to a lower rate than one anna per mensem. And provided likewise, that the aggregate amount assessed shall not exceed the average of two annas per mensem upon each shop or occupied habitation, or the total sum of six rupees and four annas for every fifty shops or occupied habitations.

(no individual to be assessed at more than two rupees,)

to exempt persons too poor to pay one anna per mensem;

Article 2*nd*.—In the event of any proprietor or principal occupier of any shop, or habitation in the said mohulla, being in circumstances so indigent as to be manifestly unable to pay the monthly contribution of one anna, such person shall altogether be exempt from assessment.

Article 3rd.—The total amount to be assessed by you, in the entire mohulla, shall be sufficient to provide for the maintenance of (number) chokeedars at the monthly wages of (amount).

total amount required;

Article 4th.—When you shall have regulated the assessment on the principles above specified, you are to deliver to the magistrate a list, at the foot of which you shall affix your signature, specifying the names, occupation, and amount of assessment payable by each shopkeeper, or householder assessed, according to the subjoined form:—

to furnish a statement of the assessment;

NAME OF MOHULLA.

Names of persons assessed.	*Caste or profession.*	*Amount of monthly quota.*
Gocul Das,.....	Merchant, ...	8 annas.
Kalachund, ...	Bunnea,.....	4 „
Gungaram,.....	Sonar, ...	2 „
Bhoobun, ...	Telee,.....	1 „

Article 5th.—You are hereafter to nominate and appoint the police chokeedars, who may be entertained, under this regulation, for the protection of the inhabitants of the aforesaid mohulla. And you are also to report to the magistrate or police darogah of the mohulla any neglect or misconduct of such chokeedars in the discharge of their duties, or any vacancies that may arise from their absence or other cause.

to nominate the chokeedars,

and to report misconduct, or vacancies;

Article 6th.—You are annually, or at any period during the year, when you may be required by the magistrate, to revise and amend the rates of assessment, on the principles above stated. Reg. XXII. 1816, sect. 10.

and to revise the assessment when required by the magistrate.

1593. No person whatever is to be exempted, either by reason of place of birth, or by reason of descent, from the payment of this assessment. Act XV. 1837, sect. 3.

No person to be exempted by birth or descent.

1594. The houses of all Europeans, as well as natives, who reside at the sudder station, are to be assessed. C. O. Sup. Pol. L. P. No. 3 of 1839.

1595. On receipt of the list of persons assessed, which is furnished by the punchaet as required by the sunnud, the magistrate is to revise, amend, and finally adjust the rates of assessment under the limitations prescribed, in such manner as appears just and proper, on consideration of any complaints of inequality of assessment, or representations of inability to pay the amount assessed, which are preferred under the section following, provided always that the total amount assessed suffices to maintain the number of chokeedars the magistrate deems requisite for the protection of the inhabitants, under the limitation prescribed in sect. 4 of this regulation. Reg. XXII. 1816, sect. 11.

Magistrate is to revise and adjust the assessment.

1596. Any individual who considers himself aggrieved by the assessment which is fixed by the punchaet, or who is altogether unable to pay the lowest rate of monthly contribution, is at liberty to appeal to the magistrate by a petition setting forth the ground of dissatisfaction or alleged grievance; and, on the party making oath to the truth of the circumstances therein stated, the magistrate, after such inquiry as he deems necessary, is either to amend the rate of assessment, or to grant such other relief as appears just and proper; and his decision on all such petitions is to be final. Reg. XXII. 1816, sect. 12, cl. 1.

Persons aggrieved by the assessment may appeal to the magistrate.

In such cases petitions to be received on unstampt paper.

1597. The magistrate is empowered and required to receive all such petitions on unstampt paper. Reg. III. 1821, sect. 6, cl. 2.

Session judge may report to government an unequal assessment.

1598 It is competent to the session judge, on the receipt of information leading him to be of opinion that the rate of assessment is too high, or otherwise essentially wrong or defective in any respect, to report his sentiments on the subject to government, in order, that after making such further inquiries as may be necessary, suitable measures may be adopted for the revision or correction of the assessment. Reg. III. 1812, sect. 6, cl. 3.

After adjustment, the statement of assessment is to be published.

1599. When the rates of assessment have been finally adjusted as directed above, a fair copy thereof, with a notification prefixed according to the form and tenor prescribed below,(a) and written in the language and character most commonly understood, is to be affixed for general information in some conspicuous and frequented place in the mohulla, or division of the town, to which the assessments apply; a second copy is to be affixed in the same manner at the police thana; and a third is to be deposited in the office of the magistrate. Reg. XXII. 1816, sect. 13.

A revised statement of assessment is to be prepared and published every year.

1600. A revised and corrected list of names, with amended rates of assessment regulated on the principle prescribed in the above sunnud, with a notification prefixed according to the form prescribed, is to be annually prepared and published for general information in the manner above directed. Reg. XXII. 1816, sect. 14, cl. 1.

Revision and amendment of assessment how to be made.

1601. The magistrate is competent to cause the assessments to be revised and amended by the punchaet at any period during the year, whenever that measure is necessary, in order to supply any deficiency that eventually arises in the amount of the funds for the payment of the stipends of the chokeedars; but on all such occasions he is to address a written order to the punchaet, attested by his official seal and signature, specifying the amount of the deficiency required to be supplied by an amended assessment, and requiring a return to be made of such amended rates, according to the form subjoined to the above sunnud, within a stated and reasonable period. Reg. XXII. 1816, sect 14, cl. 2.

(a) "Whereas (names of chokeedars to be here specified) have been appointed chokeedars for the protection of the persons and property of the inhabitants of (name of mohulla of city or town), and whereas the under noticed rates of assessment have been determined by a punchaet of the said inhabitants for the payment of the monthly wages of the aforesaid chokeedars: the several persons whose names are subjoined are hereby required to pay the monthly contributions specified with regularity to the bukshee, who is appointed by the magistrate to receive the same, the first payment commencing from the date of this notification, and on or before the 5th day of each (Bengal or Fussily) month; or in default thereof any arrear that may be due will be realized by distraint and sale of the personal effects of the defaulter."

Names.	*Caste or profession.*	*Amount monthly assessment.*

Appendix B. to Reg. XXII. 1816.

1602. For the purpose of realizing the amount of the assessments, for keeping with regularity and accuracy the records appertaining to the subsidiary police establishments, and for the payment of the monthly wages of the chokeedars entertained under this regulation, an intelligent and respectable native, duly qualified, is to be selected and appointed by the magistrate, who is to be denominated the sudder chokeedaree bukshee, and who is to receive such fixed monthly salary and allowance for the provision of stationery and materials for keeping the prescribed records, as is determined by government. In making this selection, it is the duty of the magistrate to consult, as far as practicable, the wishes of the most respectable inhabitants of the town. Reg. XXII. 1816, sect. 15.

Sudder chokeedaree bukshee to be appointed.

Salary and allowances to be fixed by government;

1603. The fixed monthly salary and allowance, made to the bukshee as above, is to be defrayed from the amount of the assessment levied in the several cities and towns for the maintenance of such police establishments. Reg. II. 1832, sect. 4.

and to be defrayed from the assessment.

1604. The bukshees so appointed are to be exclusively employed in the duties prescribed by this regulation, to the faithful discharge of which they are to be sworn; and the magistrates are strictly enjoined not to allow any police darogah, or other public officer subject to their authority, or any other individual whatsoever, to interfere in any manner with the bukshee in discharge of the duties specified following. Reg. XXII. 1816, sect. 16, cl. 1.

Duties of bukshee, in the discharge of which he is not to be interfered with.

1605. The bukshee is to prepare, from the lists specified in the sunnud of the punchaet, a general register in a book to be signed and paged by the magistrate, or by his assistant, containing the names of all persons assessed, the amount payable monthly by each person, and the names and number of chokeedars entertained in each mohulla according to the form C (No. 25 of appendix B). Reg. XXII. 1816, sect. 16, cl. 2.

He is to prepare a general register of the assessment;

1606. On the first of each Bengal or Fussily month the bukshee is to proceed to collect in person if practicable, or otherwise with the aid of the chokeedars, the quotas payable by each assessed individual within the limits of the city or town, being the station of the magistrate. Reg. XXII. 1816, sect. 16, cl. 3.

to collect the assessment;

1607. For all sums so paid, the bukshee is to sign any receipt or acknowledgment, which is correctly prepared and presented to him for that purpose, at the time of payment, by individuals assessed, who are able to write; or should the person assessed be unable to write, the bukshee is to grant a receipt. Reg. XXII. 1816, sect. 16, cl. 4.

to grant receipts;

1608. On the 10th of each Bengal or Fussily month, the bukshee is to deliver to the magistrate in one list a statement showing the names of any defaulters, the mohulla in which they reside, and the amount due from each, according to the form D (No. 25½ of appendix B), and upon receipt of which the magistrate is to proceed as hereafter directed. Reg. XXII. 1816, sect. 16, cl. 5.

to report defaulters to the magistrate;

1609. The whole of the chokeedaree stipends, which are realized by the bukshee, are to be immediately deposited by him in the treasury of the magistrate, and the receipt of the treasurer to be taken by the bukshee. Reg. XXII. 1816, sect. 16, cl. 6.

to deposit all sums realized with the treasurer;

1610. The cess is invariably to be collected under the superintendence of the bukshee, who is to be required always to deposit the money as it comes in with the treasurer, taking receipts for the same. C. O. Sup. Pol. L. P. No. 3 of 1839.

to cause the attendance of the chokeedars for the payment of their salaries;

1611. On the last day of each Bengal or Fussily month, the bukshee and police darogah jointly are to cause the attendance of the chokeedars at the cutchery of the magistrate, where they are to be paid their monthly wages in presence either of the magistrate or of his assistant, the receipt of each chokeedar being taken for the same in such form as is convenient. Reg. XXII. 1816, sect. 16, cl. 7.

to prepare summonses against defaulters; to keep accounts of sales; and to perform other duties required by the magistrate.

1612. The bukshee is likewise to prepare any summons or process to be issued against the defaulters; he is to keep a correct and regular account of all sales, which are made by him, under the authority of the magistrate, for the realization of arrears according to such form as is prescribed by the magistrate: and he is to perform any other duties which the magistrate directs connected with the general management of this branch of the police establishments. Reg. XXII. 1816, sect. 16, cl. 8.

But they are not to perform unauthorized duties.

1613. The magistrate is to enforce a strict observance of the above rules, and to restrain the bukshees from any acts not expressly authorized. Const. No. 215.

Magistrate how to proceed on the receipt of lists of defaulters.

1614. On receipt of the lists of defaulters specified above, the magistrate is to issue a summons against such defaulters to be written on the reverse side of the said list, requiring the immediate appearance of the persons therein named at his cutchery; and is either himself, or by means of his assistant, to examine into the merits of the case; and should the party allege that payment has been made, the magistrate, or his assistant, is to require the production of the voucher specified above, or is to make such further inquiry as he deems proper; and in the event of it appearing from such investigation that any arrear is due, the magistrate is to issue a written order to the bukshee to levy the same by process of distress and sale of such part of the personal property of the defaulter as may suffice to make good the amount; and all orders so passed by a magistrate are to be final. Reg. XXII. 1816, sect. 17.

Police darogahs to assist bukshee in effecting sales.

1615. It is the duty of the police darogah to render the bukshee any aid he requires in the execution of the above duty; but all sales which become necessary under the preceding section are to be made in the most public manner practicable, and are to be previously notified by beat of drum in the mohulla; and any overplus which arises after payment of the arrear due is to be restored to the party; or should the arrear be discharged at any time previously to such sale, the distress is to be immediately withdrawn, and the property restored to the owner. Reg. XXII. 1816, sect. 18.

Complaints against the bukshee to be cognizable by the magistrate only: to what punishment he is liable.

1616. Any complaints which are preferred on oath against a bukshee, appointed under this regulation, for undue exaction, malversation, or other misconduct in the discharge of the duties prescribed by this regulation, are to be cognizable by the magistrate only; and on proof of any such offence to the satisfaction of the magistrate, the bukshee is to be liable to dismissal from his office, and to imprisonment in the criminal jail for a period not exceeding six months; and is likewise to be required to refund to the party aggrieved any money corruptly or unduly exacted or received, or to restore any effects, or the value thereof, which have been illegally sold or distrained; or, in default thereof, he is to be

further imprisoned until the amount is paid, provided that the total period of imprisonment does not in any case exceed one year; or should the act with which a bukshee is charged be of a nature to render it proper that he be committed to take his trial before the sessions court, the magistrate is of course to proceed against him in conformity with the provisions of the general regulations. Reg. XXII. 1816, sect. 19.

False complaints against him how to be punished.

1617. Whenever any charge, which is preferred against a bukshee for any unauthorized act alleged to have been done by him in the discharge of his duties, proves upon investigation to be manifestly unfounded, exaggerated, or vexatious, the party preferring the same is to be sentenced to punishment by fine or imprisonment, not exceeding the limitations specified in sect. 10, Reg. IX. 1793, and sect. 5, Reg. VII. 1811. (*See paras.* 267 *et seq*). Reg. XXII. 1816, sect. 20.

Punishment of persons refusing to serve on punchaet.

Magistrate how to proceed if punchaet fails to perform their duty.

1618. In the event of any individual, who is appointed by a magistrate a member of a punchaet, declining without reasonable or sufficient grounds to undertake the office as prescribed by this regulation, he is either to find a substitute to be approved by the magistrate, or to be subject to the payment of a penalty not exceeding 50 rupees, to be regulated at the discretion of the magistrate with reference to the circumstances of the individuals, which is to be levied by the usual process of distress and sale of property. Or, in the event of the persons who are nominated and appointed by the magistrate to constitute the punchaet in any instance failing or objecting to perform the duties required of them, the magistrate is to proceed to regulate the assessments, and to appoint the requisite number of chokeedars by means of the bukshee and the darogah of police: but this discretion is not to be exercised, except in cases of indispensable necessity, to provide for the objects in view; and any such interposition of the authority of the magistrate is to be withdrawn, whenever the inhabitants of the mohulla, or other division of a town, petition to be allowed to form the assessments and to appoint chokeedars in the manner otherwise provided for by this regulation. Reg. XXII. 1816, sect. 21.

Duties of chokeedars appointed under this regulation.

1619. It is to be the duty of the chokeedars, appointed under this regulation, constantly to watch over and protect the safety of the persons, and the property of the inhabitants of their respective mohullas, or divisions to which they belong; to apprehend and immediately convey to the cutwal, or darogah of police, to whose authority they are subject, any person taken in the act of committing murder, robbery, housebreaking, or theft, or in the actual commission of any breach of the peace, or against whom a hue and cry has been raised. It is also their special duty to convey to the cutwal or darogah immediate intelligence of the resort of any receivers of stolen goods, or of any robbers or other persons of notorious or suspected bad livelihood, within the limits of their respective divisions; but they are not to interfere in cases of petty assault, abuse, adultery, or abortion; nor is any person to be arrested by a police chokeedar, except in cases herein specified, unless under the special warrant of the magistrate, or of the cutwal or darogah of police to whose authority he is subject. Reg. XXII. 1816, sect. 22.

Punishment of chokeedars for neglect of duty or other misconduct.

1620. Chokeedars appointed under this regulation are not to be removed without the sanction of the magistrate; and any chokeedar, who is proved guilty of neglect or misconduct in the discharge of his duties, or who is convicted of connivance at the commission

of any robbery or other heinous offence, is to be dismissed by the magistrate from his situation, and is to be further punishable as the law directs. Reg. XXII. 1816, sect. 23.

Fines on such chokeedars not to be credited to government.

1621. All fines levied on such chokeedars for neglect of duty are to be credited to the surplus chokeedaree fund, and not to government. C. O. Sup. Pol. L. P. No. 31 of 1838.

The force is to be occasionally weeded.

1622. When the chokeedars are paid in the presence of the magistrate, as directed above, he is to take the opportunity of weeding the force of all such as are old or inefficient, and such as are connections or servants of the punchaet, or of the omlah of his court. C. O. Sup. Pol. L. P. No. 3 of 1839.

Report of such chokeedaree establishments to be annually submitted to government, through the superintendent of police;

1623. The several magistrates and joint magistrates are to cause to be annually prepared by the bukshee a complete statement, according to the form No. 25 of appendix B, of all subsidiary police establishments, which are entertained on the principle of the provisions of this regulation within the limits of their respective jurisdictions; and are to transmit the same in the month of January in each year, through the office of the superintendent of police, for the consideration of government. Reg. XXII. 1816, sect. 24.

who is to notice any deviation from the above rules; and to offer suggestions.

1624. The superintendents of police are to submit to government an annual report respecting the state of all subsidiary police establishments entertained under the above rules; and it is their special duty to bring under the notice of the local magistrates, and if necessary of government, any material deviation from the existing provisions which prevail, whether partially or otherwise, in respect to those establishments, as well as to offer any suggestions, which from experience appear calculated to extend and to confirm the benefits contemplated by their institution. Reg. XVII. 1816, sect. 4.

Magistrates are to afford information to the superintendents of police, and to listen to their suggestions.

1625. In order to enable the superintendents of police to furnish such report, the magistrates are to supply any information relating to the establishments in question which the superintendents require; and are likewise to conform to any suggestions of those officers, in respect to the organization and management of the said establishments, which are consistent with the tenor and spirit of the regulations. Reg. XVII. 1816, sect. 5.

Appropriation of surplus proceeds of tax;

1626. The magistrates and joint magistrates are competent to appropriate a portion of the tax levied under the above rules to the purpose of cleansing and repairing the towns in which that tax is levied. Act XV. 1837, sect. 1.

but not to be made without the sanction of government.

1627. No such appropriation is to be made until it has been ascertained that there is a surplus fund, and until the amount required to be expended has been sanctioned by government. The magistrates therefore are to apply for the sanction of government through the office of the superintendent of police before they undertake to expend any surplus in hand; and they are at the same time to forward an account current showing the actual surplus in the treasury at the time. C. O. Sup. Pol. L. P. No. 25 of 1838.

Annual returns of collections and expenditure to be furnished to superintendent of police.

1628. Annual returns of the chokeedaree collections and disbursements, and of the detail of expenditure of the surplus collections,(a) are to be furnished to the superintendent of police. C. O. Sup. Pol. L. P. Nos. 6, and 14 of 1838.

(a) The forms are given in a subsequent place with the other periodical returns to be furnished to the superintendent of police.

Village chokeedars.

Darogahs to keep up register of chokeedars.

Landholders to nominate in case of vacancy.

1629. It is the duty of the darogahs, under the guidance and instruction of the magistrate, to keep up at their thanas a complete register of the village watchmen, employed within their respective limits, drawn out according to the form, No. 6 (No. 19 of appendix B); and upon the death or removal of any of the watchmen, the landholders and other persons, to whom the right of nomination to such vacancies belong, are to send the names of the persons, whom they appoint, to the darogah of the jurisdiction, that they may be registered by him as above directed. Reg. XX. 1817, sect. 21, cl. 1.

All persons employing watchmen or guards are required to furnish an annual list of them to the magistrate.

1630. For the more complete formation of the above register, and to enable the magistrates at all times to ascertain what number and descriptions of watchmen and guards are maintained in aid of the police throughout their respective jurisdictions,—every landholder, farmer, merchant, or other person, employing pykes, chokeedars, pasbans, nigabans, burkundazes, or any other description of watchmen or guards, is to transmit, in the first month of each succeeding Bengal, Fussily, or Willaity year (according to the era current in the district) made up to the last day of the preceding year, a list thereof, specifying the names, occupations, places of residence, and allowances in land or money, of the several persons entertained by them, to the magistrate of the zillah or city in which they are employed. Any neglect to furnish such lists (especially after being called upon by the magistrate), as well as any wilful omission to include in them persons actually employed as guards or watchmen, of any denomination, is liable to a fine to government not exceeding 200 rupees, to be determined by the magistrate according to the situation of the party and circumstances of the case. Reg. XII. 1807, sect. 21.

Penalty in cases of neglect or wilful omission.

Fine how to be levied; and from whom.

* *v. para.* 918.

1631. Any fine imposed in conformity to the above provision should be commuted, if not paid within a given time, to imprisonment for a limited term.*—In the absence of the zumeendar, the actual manager of the estate is the responsible person, and should be proceeded against in default of compliance with the above requisition. Const. No. 1150.

Chokeedars are subject to darogahs;

1632. The village watchmen are subject to the orders of the darogahs. Reg. XX. 1817, sect. 21, cl. 2.

and are not zemindar's servants.

1633. Under the above provision, chokeedars cannot be considered in the light of zemindar's servants.(*a*) Const. No. 1281.

(*a*) The distinction between these village chowkeedars and the *gram-serinjamee* pykes, which exist in some districts, must be borne in mind. The latter are "the servants of the zumeendars, amenable only to their orders, and subject to removal by them; and they ought not to be held to be in any way police officers, or subjected to the control of the darogahs." They are, accordingly, to be excluded from the register of chokeedars; and are not to be allowed to perform any of the duties of that office. *See letter of Sup. Pol. L. P. to the magistrate of Hooghly, January* 8, 1844, *circulated in the neighbouring districts.* In an able minute of the Marquis of Hastings respecting the system of police, quoted in the letter from the Bengal Government to the Court of Directors, February 22, 1827, he observes:—"Constituted as the village community usually is at present, the chokeedars are servants of the community, and as well from caste as from custom occupy the lowest station there. Pykes, goraits, and duneks, are not exclusively servants of the zumeendars; besides the trifling allowance they receive for the performance of their duties, which are chiefly distinct from police, they are paid for the protection they afford the society by an almost discretionary contribution from the villagers, partly in land, partly in grain at the time of harvest, and partly in yearly or monthly presents in money, from residents of a certain degree. It is the interest therefore of these functionaries to secure the good will of the community they belong to; indeed, whenever, from the laxity of the general control exercised over them, they may have taken to practices destructive to the general peace, it will always be found that the scene of their crimes is not their own place of residence, nor will their own community have been in any way the sufferers." *Minutes of Evidence before the House of Commons, ordered to be printed August* 16, 1832, *vol.* 4, *page* 261.

Chokeedars when and how to make reports at the thana.

1634. Village watchmen who reside within one coss of the thana to which they are subject, are to report daily to the thana all occurrences connected with the police, which have happened in their respective villages during the preceding twenty-four hours; —village watchmen, residing from one to three coss distant, from the thana, are to furnish similar reports twice every week;—and all other watchmen, whose residence is situated at a greater distance, are to report once in every week, or fortnight, as they are specially instructed by the darogah so to do. Reg. XX. 1817, sect. 21, cl. 3.

Reports of chokeedars to be entered in thana diaries.

1635. All occurrences reported by the village watchmen are to be recorded by the mohurrirs in the thana diaries; but it is not to be considered necessary to enter in such diaries the reports of watchmen, who have no communications to make further than that the peace of their divisions has been undisturbed since their last report. Reg. 1817, XX. sect. 21, cl. 4.

Duties of chokeedars in regard to the apprehension of offenders, and conveying intelligence to the thana.

1636. The village watchmen are to apprehend and send to the darogah, or other police officer presiding at a thana, any person who is taken in the act of committing murder, robbery, housebreaking, or theft; also proclaimed offenders, and persons against whom a hue and cry has been raised of their having been concerned in a recent criminal offence. It is further the special duty of the village watchmen to convey to the thana immediate intelligence of any robbers, who have concealed themselves in their respective villages or in the adjacent country; and also of any vagrants, or other persons who are lurking about the country without any ostensible means of subsistence, and who cannot give a satisfactory account of themselves. It is likewise the business of the village watchmen to convey early intimation to the thana of all murders, robberies, burglaries, thefts, violent affrays, and other heinous offences, perpetrated in the villages or places in which they are stationed. Reg. XX. 1817, sect. 21, cl. 5.

Reports to be received verbally; and chokeedars not to be detained or sent to the magistrate.

1637. The report of the village watchmen to the police officers of the regular establishments is to be made verbally; and they are not, unless they appear as prosecutors, to be sworn to their depositions at the thana, or to be detained at the thana, or sent into the magistrate's court, unless on account of misconduct, or under the special orders of the magistrate. Reg. XX. 1817, sect. 21, cl. 6.

Darogahs are to inquire into the conduct of the chokeedars;

and how to proceed in cases of neglect or suspicion of criminality.

Punishment.

1638. The darogahs are invariably to ascertain and report, when making enquiries on the occasion of any robbery, burglary, or theft, the conduct of the village watchmen; and whether they were present at their posts when the offence was perpetrated; if not, the cause of their absence, and whether there is reason to believe that they were themselves concerned in, or connived at, the commission of the crime. In the event of any neglect or suspicion of criminality attaching to a village watchman, the darogah is either to send the individual to the magistrate with a separate report of the grounds of the charge exhibited against him and evidence to establish the same, or is to forward a report in the first instance and wait the instructions of the magistrate, as the nature of the alleged offence dictates. In the event of any gross neglect or misconduct in the discharge of his duty, as a police officer, being established against a village watchman, he is liable to dismission from his station by order of the magistrate, independently of any punishment to which he is subject for specific acts of criminality under the laws and regulations in force. Reg. XX. 1817, sect. 21, cl. 7.

1639. The provisions of Reg. II. 1832, do not exempt the chokeedars from the duty of reporting the commission of such offences to the police, who are still bound to report all cases that come to their knowledge to the magistrate. C. O. No. 130 of vol. 2.

Chokeedars are to report all thefts and burglaries whether prosecuted or not.

1640. As chokeedars found guilty of neglect of duty were not formerly liable to stripes in addition to imprisonment, the provisions of Reg. II. 1834, in prohibiting the infliction of stripes, do not authorize an addition to the period of imprisonment to which they were liable previous to the issue of that enactment.(a) Const. No. 923. C. O. No. 238 of vol. 2.

They are not liable to imprisonment *in lieu of* stripes.

1641. The darogahs or their police officers are prohibited, under penalty of dismission from office, from employing the village watchmen on their private concerns, or on any duties unconnected with the police. Reg. XX. 1817, sect. 21, cl. 8.

Chokeedars are not to be employed privately by police officers.

1642. In those towns and villages, where the darogahs of the mofussil police jurisdictions, or the officers of outposts, are stationed, the duties of watching and patroling are to be performed conjointly by the regular police officers and the village watchmen; and private watchmen entertained by individuals for guarding their habitations, shops, or warehouses, are also to afford their assistance, and are to be considered subject, in the performance of this duty, to the orders of the police darogah of the station. Reg. XX. 1817, sect. 21, cl. 9.

Duties of patrolling in places, where regular police establishments are stationed.

1643. On the occurrence of a gang or highway robbery, or any robbery by open violence, murder, burglary or theft attended with wounding, or any other heinous offence attended with a violent breach of the peace, the village watchmen are, to the utmost of their ability, to resist and endeavour to apprehend the offenders, and are to require the

Chokeedars are to resist offenders to the utmost of their ability, and to require the headmen of the village to assist them.

(a) It would seem that the punishment of chokeedars, especially those who are paid by land, and of other inferior police officers, for minor cases of neglect or misconduct, falls under the general powers of a magistrate But it is declared in Const. No. 244 that, as a specific provision is made in cl. 5, sect. 5, Reg. VIII. 1809 (*v. para.* 1548) for the punishment of officers of police for neglect of duty, the magistrate is restricted in such cases to the limitation of punishment therein defined; and that, unless some distinct misdemeanor beyond neglect of duty is established, the case does not fall within the magistrate's discretion, under the general powers vested in him by sect. 19, Reg. IX. 1807. The limitation of punishment referred to, however, is a fine of "a sum equal to one month's salary, to be levied by a stoppage of the fixed allowance payable to such officer;" and it follows that this provision has no effect in the case of a chokeedar who receives no fixed salary from government; while it is equally clear that there are many cases of neglect and misconduct, which would not be sufficiently punished by the fine of a month's pay though hardly worthy of dismissal, and many in which no punishment but moderate imprisonment would produce the desired effect. According to the construction above quoted (No. 923) Reg. II. 1834, entirely repeals the following provision of sect. 6, Reg. III. 1812 :—" Any pyke, chokeedar, pasban, nigaban, or other description of watchmen subject to the orders of any cutwal or darogah of police, who may hereafter be proved guilty of any gross neglect or misconduct in the discharge of his duty as a police officer (such neglect or misconduct not being of a nature which may render it proper that he should be committed or held to bail for trial by the court of circuit) shall for such offence be liable to suffer corporal punishment by sentence passed by the magistrate, not exceeding 30 stripes of a ratan, instead of the penalties of fine or imprisonment; provided the offender shall appear a fit object of corporal punishment, and the magistrate shall be of opinion that the infliction thereof will operate as a better example than the penalties of fine or imprisonment." The law therefore stands as it did before the enactment of the latter regulation; and, unless the incidental mention of imprisonment therein, and in Const. No. 923, can be construed to empower the magistrate to award imprisonment, either no punishment can be inflicted except the fine of a month's pay, or such cases must fall within the general powers of a magistrate notwithstanding the principle enunciated in Const. No. 244.

headmen of the village to collect the inhabitants, and to oppose and seize the criminals, or to pursue them if they have fled; and it is incumbent on the inhabitants of the villages, through which or near to which the pursuit lies, to afford, on the requisition of the village watchman or other police officer, every practicable assistance towards the apprehension of the robbers or other offenders, and recovery of any property stolen or plundered by them, continuing the pursuit from village to village. Any headman or watchman of a village, who is convicted before the magistrate of wilful inattention to such requisition, is liable to fine and imprisonment not exceeding the limit prescribed by sect. 19, Reg. IX. 1807.* Reg. XX. 1817, sect. 21, cl. 10.

Punishment of such in case of refusal.

v. para. 507.

Police not to interfere to procure the payment of chokeedars' wages.

1644. Any interference on the part of the police officers, either with or without the orders of the magistrate, to procure the payment of wages said to be due to the village chokeedars, is illegal. It is also illegal to compel the munduls and ryots to keep watch or to go the rounds during the night within their respective villages: and police officers are required to refrain from such acts under pain of severe punishment. C. O. Sup. Pol. L. P. No. 14 of 1839, and No. 8 of 1841. Govt. order on police report for the first 6 months of 1838, page 230.

Munduls, &c. are not to be compelled to keep watch.

Chokeedars' crops are not exempted from sale in execution of decrees.

1645. Crops grown on lands allotted to village chokeedars for their maintenance cannot be exempted from liability to sale, in satisfaction of decrees issued against their owners. Const. No. 1212.

Rules for the establishment of chokeedars in government khas muhals.

1646. In khas muhals under settlement, the magistrate is to arrange with the local settlement officer for the keeping up and payment of a sufficient number of chokeedars; it being the wish of government that the village police of khas muhals, that is muhals the property of government, should be so manned, paid, and organized as to be a model to all surrounding estates. When the settlement is in progress, the magistrate is to inform the settlement officer whether the police are to be provided for in land or money, and what number of individuals is to be provided for in each village. On receiving the information, the settlement officer is to assign three acres of average good land to each chokeedar, and one acre to each bullahir, if the subsistence is ordered to be given in land; and three rupees a month to each chokeedar, and one rupee a month to each bullahir, if the subsistence is to be given in money. In the former case, the settlement officer is to cause a statement of the numbers assigned to the fields in the field map and khusrah to be furnished to the magistrate. C. O. Sup. Pol. L. P. No. 11 of 1841. C. O. S. B. R. L. P. No. 44 of 1840, and No. 18 of 1841.

CHAPTER III.

OF POLICE DUTIES.

SECTION I.

OF RECORDS, DIARIES, AND REGISTERS TO BE KEPT AT THE THANA.

Regulations of government to be preserved, and promulgated

1647. The police darogahs and mohurrirs are enjoined to bind up separately from all other records, and to preserve with care, the several regulations of government, which are sent to their respective thanas; and they are also to cause the same to be publicly read for general information, and to take every favorable occasion of promulgating the rules therein contained. Reg. XX. 1817, sect. 8, cl. 1.

Rules for keeping and inspecting the thana books and registers, by darogahs and mohurrirs on receiving charge, and by the magistrate and his assistants

1648. The books and registers, alluded to in the following clauses of this section, are to be kept up with regularity at the several police thanas; and darogahs and mohurrirs on their appointment to police stations, are required to inspect the records, and to report to the magistrates on the general state of the thana papers within ten days of receiving charge. Every police darogah, or thana mohurrir, receiving charge of the records of a police station, is to sign a list of the records delivered over to him, which is also to be signed by the officer delivering over charge; and the list so authenticated by their joint signatures is to be transmitted to the magistrate. An exact counterpart, authenticated in the same way, is to be kept at the thana. The magistrates and their assistants, and the joint magistrates, who occasionally visit the thanas, are to avail themselves of any opportunities that may offer to inspect the records; and in the event of their being found defective, or of any gross neglect in the care of them, the darogah and mohurrir, who appear culpable, are to be liable to dismission, or to a fine, according to the circumstances of the case. Reg. XX. 1817, sect. 8, cl. 2.

Punishment of neglect.

Blank books to be furnished for diaries,

1649. The police darogahs are severally to be furnished with blank books for diaries: each book containing 100 pages, to be signed and numbered by the magistrate's assistant, if on the spot, or in his absence by the serishtadar, or other head ministerial officer of the magistrate's court. Reg. XX. 1817, sect. 8, cl. 3.

in which every occurrence is to be noted

1650. Every occurrence which is brought to the knowledge of the officers of police is to be entered in the thana diary on the day on which the event is communicated to the thana; and, if no accident is communicated, it is to be so noted in the diary. Reg. XX. 1817, sect. 8, cl. 4.

Particulars to be entered therein, when persons are apprehended.

1651. The darogahs are to enter in their diaries the names of all persons whom they apprehend, the crime or misdemeanor with which they are charged, the date of their apprehension, and the date on which they are dispatched to the magistrate. Reg. XX. 1817, sect. 8, cl. 5.

The purport of every petition, &c to be entered therein.

Penalty for omission or misrepresentation.

1652. The purport of every petition, representation, complaint, or information presented to any officer of police, is to be recorded in the diary, whether the same is cognizable by the native officer of police or otherwise: and if it is proved that a darogah has apprehended any persons, or issued orders, or done any official act, which he has not inserted and truly stated in his diary, or that any occurrences have been wilfully omitted, he is to be punished with dismission from office, or by such other penalty, as the circumstances of the case appear, under the general regulations, to require. Reg. XX. 1817, sect. 8, cl. 6.

Entries how to be attested

1653. Every entry made in the diary is to be attested by the signature of the individual by whom it is recorded. Reg. XX. 1817, sect. 8, cl. 7.

Report for new diary books, when required.

1654. The officer presiding at the thana is to be careful to report to the magistrate at least a month before the diary books are likely to be written through, in order that fresh blank books may be furnished to the thana without delay. Those diary books which are completed are to be deposited in the records of the thana. Reg. XX. 1817, sect 8, cl. 8.

Books to be kept for copies of reports to magistrate;

1655. A book is to be kept containing copies of all urzees, kyfiuts, reports, and returns, made by the officers of the thana establishment to the magistrate's court. Reg. XX. 1817, sect. 8, cl. 9.

for copies of magistrate's orders,

1656. A book is to be kept containing copies of all perwannahs, and orders of every description, received from the magistrate's court. Reg. XX. 1817, sect. 8, cl. 10.

for copies of chalans,

1657. A book is to be kept containing copies of all chalans, or despatches of prisoners and property forwarded to the magistrate's court, drawn out agreeably to the forms Nos. 2 and 3 (Nos. 12 and 13 of appendix C). Reg. XX. 1817, sect. 8, cl. 11.

for register of heinous offences,

1658. An abstract register is to be kept of robberies, and other heinous offences, ascertained to have been committed within the jurisdiction of the thana, in each month, drawn out in the form No. 4 (No. 14 of appendix C*). Reg. XX. 1817, sect. 8, cl. 12.

* *v para* 1664 *et. seq*

for copies of lists of stolen property,

1659. A book is to be kept containing copies of all lists of stolen property delivered into the thana by prosecutors and others. Reg. XX. 1817, sect. 8, cl. 13.

for register of fugarees,

1660. A register is to be kept, according to the form No. 5 (No. 2½ of appendix B), of offenders who have broken jail, or have otherwise eluded the pursuit of justice, and for whose apprehension orders have been received at the thana from the magistrate's court. Reg. XX. 1817, sect. 8, cl. 14.

and for list of villages

1661. A list is to be kept of the names of the villages comprised within the limits of the thana, showing the names of the proprietors and of the village watchmen, agreeably to the form No. 6 (No. 19 of appendix B). Reg. XX. 1817, sect. 8, cl. 15.

SECTION II.

OF RETURNS, REPORTS, AND STATEMENTS, TO BE FURNISHED BY POLICE OFFICERS.

1662. An extract from the thana diary, and from the abstract register of robberies and other heinous offences (No. 4 above prescribed), containing the entries during the month, is to be prepared *verbatim*, and transmitted to the office of the magistrate on or before the 5th of every ensuing month. Reg. XX. 1817, sect. 9, cl. 1.

Extract from diary, and abstract register of heinous offences, to be sent monthly to magistrate;

1663. Together with such monthly reports, the darogahs are to forward, under their official signature, and in charge of a burkundaz, a list of the police officers on the thana establishment, entitled to receive pay from government for the past month, after the form No. 7 (No. 20 of appendix B). This list the burkundaz is to deliver to the treasurer of the foujdaree court, on his receiving the pay of the thana establishment, which is forthwith to be conveyed to the darogah, or other police officer in charge of the thana, who is to pay the amount due to the several individuals of the establishment, and to transmit their receipts with his own in a paper corresponding in substance with the form above mentioned, to remain with the records of the magistrate's court. Reg. XX. 1817, sect. 9, cl. 2.

and also a list of thana officers entitled to pay

Rules for their payment.

1664. In preparing the abstract monthly statements of heinous offences, according to form No. 4 (No. 14 of appendix C), the darogahs are to pay strict attention to the following rules. Reg. XX. 1817, sect. 9, cl. 3.

Rules for preparing abstract monthly statement of heinous crimes

1665. The darogahs are, as far as is in their power, to distinguish wilful and malicious murder *(kutl-amd)* from every other species of homicide, reporting all cases of murder not accompanied with robbery or burglary under the 5th head, and cases of homicide of every other description, excepting homicide in affrays, under the 11th head of the statement. Reg. XX. 1817, sect. 9, cl. 4.

Classification of wilful murder and homicide,

1666. Under the 6th head the darogahs are to insert all cases of wounding, or violent corporal injury inflicted maliciously, and not in the prosecution of robbery or burglary, or during an affray. Reg. XX. 1817, sect. 9, cl. 5.

of malicious wounding, or violent corporal injury,

1667. Under the 12th head of the statement all affrays and riots are to be entered, in which any considerable number of persons has been concerned, or in which any person has been killed or wounded, and the public peace has been disturbed; but it is not necessary to include in this column cases of assault and battery, or drunken broils, in which only a few individuals have disputed, and no very serious personal injury has been sustained. Reg. XX. 1817, sect. 9, cl. 6.

of affrays, riots,

and broils,

1668. Under the 13th and 14th heads of the statement all cases are to be entered, in which any person enters or attempts to enter by day or by night, by breaking into any dwelling-house, ware-house, store-house, or other building or place used for the custody and preservation of property, whether the same is constructed of stone, brick, mud, bamboo, grass, or other materials, or into a tent, boat, or other place of habitation, whether such entry be effected by cutting through or under the wall, or by forcibly

of the various kinds of burglary,

raising the roof of the house, or by any other means attended with breaking, and whether in pursuance of the intent to commit such robbery any property be carried away or otherwise. Reg. XX. 1817, sect. 9, cl. 7.

of receiving stolen property;

1669. Under the 17th head all cases are to be entered of receiving, vending, or concealing, or melting down stolen property. Reg. XX. 1817, sect. 9, cl. 8.

of arson and accidental fires;

1670. The 18th head of the statement is to include only those cases of arson, in which any habitation or other property appears to have been purposely and maliciously fired; and the darogah is not to include accidental fires under this head. Reg. XX. 1817, sect. 9, cl. 9.

and of suicide.

1671. Under the concluding or 20th head of the statement, the darogah is to insert all cases in which the person destroyed appears to have been the immediate and voluntary cause of his own death. Reg. XX. 1817, sect. 9, cl. 10.

All heinous offences are to be reported, and attempts distinguished.

1672. The darogahs are to report in the statement above prescribed all heinous offences which come to their knowledge, whether the offenders are apprehended or otherwise; and are to distinguish in the third column all attempts in which the criminal attempt has failed, inserting in the second column only those cases in which the crime has been actually perpetrated. Reg. XX. 1817, sect. 9, cl. 11.

Monthly report to be sent to superintendent of police.

1673. A monthly report of crimes and offences, agreeably to the form No. 4 (No. 14 of appendix C) is to be transmitted by the darogahs from each thana to the superintendent of police for the division, on or before the 5th of the ensuing month. Reg. XX. 1817, sect. 9, cl. 12.

Rules for writing and dating reports, returns, and examinations.

1674. The reports and returns submitted by the police officers to the magistrates are to be written in a clear and legible hand, and are to bear at the foot of the writing the date of the despatch, according to the era current in the district, and the signature of the police officer by whom the report is made, and, when the circumstances admit, the seat of the thana: all examinations taken and proceedings held are to be superscribed with the date and month of the era current in their several jurisdictions. Reg. XX. 1817, sect. 9, cl. 13.

Rules for the transmission of papers to the foujdaree court.

1675. The papers transmitted by the police officers to the foujdaree court are to be strung on a thread, the ends of which are to be secured with wax; and the record of each case is to be made up in a separate envelope, and addressed to the magistrate of the district; the name of the thana, from which the report is made, is to be marked on the envelope. Reg. XX. 1817, sect. 9, cl. 14.

Magistrate to limit the time for the execution of each order.

1676. Every process and order addressed by a magistrate to a police officer is to limit a certain time, in which it is to be served, executed, and returned to the magistrate's court. Reg. XX. 1817, sect. 9, cl. 15.

Returns to orders to be endorsed as far as possible on the back of the original perwanah; and registered.

1677. The returns to all orders and processes, and the certificates of the due publication of all proclamations, addressed by the magistrates to the police officers, are to be endorsed, as far as the size of the paper will admit, on the original order or process; and if the length of the return renders it necessary, a separate piece of paper is to be annexed to the original document; and a copy of the return is to be entered in the register prescribed in cl. 9, sect. 8, of this regulation (para. 1655). Reg. XX. 1817, sect. 9, cl. 16.

1678. The police officers are, to the extent of their ability, to carry into effect such instructions as they receive, within the period specified in the magistrate's order; and if the directions contained in the order or process cannot be entirely carried into effect within the time limited, a report is to be made, at the expiration of such period, of the cause of delay, with specific information when a further and full return will be made; and the original order or process is to be sent to the magistrate, with such final return, endorsed as directed above. Reg. XX. 1817, sect. 9, cl. 17.

If delay in making returns to orders is unavoidable, the cause is to be reported at the expiration of a given time.

1679. The darogahs and mohurrirs are to be careful to render their reports and returns in as precise terms as possible, and they are to refrain from recapitulating in their returns a detail of the magistrate's orders; and when referring to such orders, are merely to state summarily the nature of the case and the date of the perwanah. Reg. XX. 1817, sect. 9, cl. 18.

Reports to be accurate and concise.

1680. No precise rules can be laid down for the returns to perwanahs; but any police officer, unnecessarily taking up the time of the magistrate with long reports, is to be entered in the minor register*; and such conduct, if persisted in, should cause dismissal. C. O. No. 138 of vol. 3, rule 7.

If the returns to perwanahs are unnecessarily long, the police officer is liable to punishment.

* *v. para.* 1550.

1681. The police officers are to report concisely, but clearly, all important occurrences which take place within their jurisdiction, considering that an important part of their duty. C. O. No. 138 of vol. 3, rule 8.

Every important occurrence is to be noted.

1682. Darogahs are to transmit their thana reports direct to the superintendent of police, and not through the magistrate. C. O. Sup. Pol. L. P. No. 5 of 1840.

Thana reports to be sent *direct* to the superintendent.

1683. Darogahs are to report to the superintendent of police at the time the occurrence of serious cases only, such as murders, dacoities, affrays, highway robberies, and heavy burglaries and thefts in which a prosecution is desired by the person whose property has been stolen. C. O. Sup. Pol. L. P. No. 23 of 1843.

Serious cases only are to be reported by darogahs to the superintendent.

SECTION III.

OF THE ZUMEENDAREE DAWK.

1684. To facilitate the communication between the magistrate's court and the stations of the darogahs, and to enable the magistrates to obtain speedy information of the occurrence of crimes, as well as with the view of preventing the unnecessary confinement of persons, who are detained in custody pending an inquiry of the police officers, or trial before the magistrate, the magistrates and native officers of police are required to attend, as far as is practicable, to the directions contained in the following rules. Reg. XX. 1817, sect. 10, cl. 1.

Importance of facilitating communication.

1685. The superintendence of the despatch by dawk of perwanahs to the darogahs, and of reports from the officers of police to the magistrate's court, is to be entrusted to the nazirs of the criminal courts and to the thana mohurrirs, who are to be held responsible for the speedy transmission of the packets to and fro; and are to report to the magistrates all instances of delay which come to their knowledge. Reg. XX. 1817, sect. 10, cl. 2.

Superintendence of dawk vested in nazirs and thana mohurrirs.

Official orders and reports are to be transmitted free of expense.

1686. As far as circumstances admit, the magistrate's orders to his police officers, and the thana reports, whether addressed to the magistrate or to the superintendent of police, are to be transmitted by the government dawk; and all dawk officers in the Company's provinces are required to receive and convey, free of expense, such orders and reports, the same being superscribed with the name and official designation of the public officer by whom the papers are despatched, together with the words "Kar Sirkar" to denote that they relate to the public service. Reg. XX. 1817, sect. 10, cl. 3.

Establishment of subordinate dawk stations.

Peons and pykes to be appointed by landholders, and dawk house to be established.

Darogah to see that the establishment is properly regulated.

1687. In cases where a thana is situated at a considerable distance from the route of the government dawk, the magistrates in communication with their police officers are to establish dawk stations between the thanas, or from the thanas to the magistrate's court at proper distances, according to local circumstances, but not in any instance exceeding five coss; and the land proprietors and farmers of land, or their local managers, are to be called upon to name and appoint the requisite number of peons or pykes (not being village watchmen) for the performance of this duty. In places where no establishment of regular police officers is stationed, they are also to be required to fix on a particular house in the village where the peons or pykes may at all times be found without delay, and to name the mundul, putwaree, or other person in the village, whose business it is to be to receive and forward the papers transmitted by the dawk. A statement after the form No. 8 (No. 21 of appendix B) is to be kept up at each thana; and it is the duty of every darogah, on his appointment to a thana, to see that this paper is included in the records of the thana, as well as that the dawk for the conveyance of the magistrate's perwanahs and the thana reports is duly regulated, and the peons or pykes maintained by the landholders, farmers, or managers, at the appointed stages. Reg. XX. 1817, sect. 10, cl. 4.

Nizamut adawlut cannot exempt landholders from contributing to the establishment; but magistrate may exercise his discretion.

1688. The nizamut adawlut have no authority to sanction the exemption of landholders paying a small revenue to government from contributing to the expense of the establishment of dawk runners; but the magistrate, in enforcing the above provisions, is to exercise his discretion according to the circumstances of each case, leaving the party dissatisfied to appeal. Const. No. 728.

Putneedars are not exempt.

1689. Putneedars are included in the terms of the above provision, and are therefore liable to be called upon to perform the duties referred to therein. Const. No. 1364.

Landholders neglecting the above rules how punishable.

1690. The landholders, proprietors and farmers of land, with their local managers and heads of villages, are to be held responsible for a due observance of the foregoing rules, and are to be liable on proof before the magistrate of wilful disregard of these provisions, especially after a previous admonition, to be punished by a fine not exceeding 100 rupees, commutable in default of payment to confinement in the civil jail for any period not exceeding one month. Reg. XX. 1817, sect. 10, cl. 5.

Appeals from orders of magistrate lie to session judge.

1691. Appeals from the orders of a magistrate, enforcing penalties under the above provision, lie to the session judge, and not to the superintendent of police. Const. No. 1307.

Date of despatch and time of receipt to be noted on the envelope by the nazir;

1692. The nazir of the magistrate's court is to forward by dawk every day at the same hour (except when otherwise specially instructed by the magistrate) all perwanahs and papers addressed to the respective thanas, which the magistrate directs to be trans-

mitted by the dawk; and is to write on the envelope of each packet the date and time of despatch. It is likewise the duty of the nazir to record on the envelope of all reports received from the thanas the date and time of their receipt. Reg. XX. 1817, sect. 10, cl. 6.

1693. All reports and papers transmitted by the dawk from the police thanas are to be addressed to the magistrate, and the seal of the thana is to be affixed to the envelope; the mohurrir is to specify on the envelope the date and hour of despatch; and in cases where the papers of one thana are left at another thana on their transit to and from the magistrate's station, the mohurrir of the latter thana is to forward such papers, noting on the back of the envelope the date and hour of the arrival and departure of the dawk. Reg. XX. 1817, sect. 10, cl. 7.

and by the mohurrir; who is to address all envelopes to the magistrate.

1694. The darogahs and mohurrirs are required to forward by the thana dawk, or by the hands of their burkundazes, as occasions offer, such reports and papers as are sent to them by the moonsiffs for the purpose of transmission to the judge of the district; and they are to grant receipts to the moonsiffs for such papers as are delivered to them. Reg. XX. 1817, sect. 10, cl. 8.

Police officers are to receive for transmission by the dawk the reports of moonsiffs.

1695. The subordinate judicial officers are to forward the records of monthly decisions to the nearest thana for transmission to the sudder station, taking a receipt from the darogah, or in his absence from the head officer present at the thana; and it is the duty of the darogah to despatch the papers in question without delay to the sudder station under charge of a burkundaz. In the *western provinces*, the darogah is to indent on the magistrate for the expense incurred in the conveyance of such papers, and to submit to the judge a duplicate of the account for his information; and the items of expense so incurred are to be charged in the monthly contingent bills of the magistrate's office. In the *lower provinces*, the judicial officers are to provide the requisite coolies for the conveyance of the records, and are to indent on the judge for the expense incurred thereby: and a chalan under the signature of the judicial officer, exhibiting the date of transmission to the thana and the number of misls, is to accompany the records for the purpose of showing whether there has been any delay on the part of the police in forwarding them to the sudder station. C. O. No. 162 W. P. and No. 192 L. P. of vol. 3.

Rules for receipt and transmission of moonsiffs' records by the police officers.

Expense incurred how to be recovered.

1696. The above order is not to be acted upon at those moonsiffee stations, at which there is a government dawk for the transmission of letters and parcels. C. O. Sup. Pol. L. P. No. 5 of 1845.

This rule does not apply where there is a government dawk.

SECTION IV.

OF IRREGULAR PRACTICES.

Police officers are not to trade;

1697. No police darogah, mohurrir, jemadar, or burkundaz, is to trade or to keep any warehouse, or shop for wholesale, or retail, within the limits of the thana to which he is appointed. Reg. XX. 1817, sect. 11, cl. 1.

nor to take leases of lands from the zumeendars of the district.

1698. The practice of police officers taking leases of land from the zumeendars of the district is prohibited. Any act of this kind is to be considered tantamount to an act of corruption; and the person guilty of it is to be removed altogether from the police force. C. O. Sup. Pol. L. P. No. 7 of 1840.

Darogahs not to employ burkundazes on their private affairs.

1699. The darogahs are prohibited from employing the burkundazes of their thanas on their own private affairs, under penalty of fine and dismission from office. Reg. XX. 1817, sect. 11, cl. 2.

Police officers demanding or receiving money from any parties in a criminal process, are liable to what penalties.

1700. Whenever a summons or warrant, or other criminal process, is served by a burkundaz, or other police officer receiving pay from government, no diet money or other allowance or gratuity is to be demanded or received from the complainant or the accused, or from any witness or other person; and the demand or receipt of such by any police officer, directly or indirectly, in violation of this rule, is punishable as a criminal offence on conviction before the magistrate or sessions court. The offender is also compellable, either on a criminal prosecution, or by a civil action, to refund the amount received, besides being liable to immediate dismission from office, under the provisions contained in the existing regulations. Reg. XX. 1817, sect. 11, cl. 3.

Darogahs are not to be entertained in the villages they visit.

1701. Magistrates are to prevent the custom of the inhabitants of a village entertaining the darogah and his numerous followers, when he proceeds into the interior. C. O. No. 321 of vol. 1.

Landholders are not to be allowed to keep established vakeels at the thanas.

1702. The darogahs are enjoined, under the penalty of dismission from office, not to permit any established vakeel or mokhtar to be permanently employed at their thanas on the part of any landholder, farmer, local agent, or other person. But this rule is not meant to preclude the occasional employment of a vakeel, or mokhtar, for any specific purpose when it is necessary. Reg. XX. 1817, sect. 11, cl. 4.

Police officers are not to employ mokhtars at the magistrate's office, without permission.

1703. The darogahs and other police officers are prohibited from employing any mokhtar or vakeel at the station of the magistrate, for the purpose of receiving and transmitting the salaries of the thana establishment, or for any other purpose connected with their public functions, except in particular cases, wherein they are especially authorized by the magistrate to employ a vakeel. Reg. XX. 1817, sect. 11, cl. 5.

Police officers are not to employ extra mohurrirs, without permission, except in special cases.

1704. No mohurrirs or writers, excepting those on the police establishments paid by government, are to be employed at the thanas without the previous sanction of the magistrate, except in cases of emergency which will not admit of delay. In the event of any darogah requiring the assistance of additional mohurrirs, in consequence of a stress of business, he is to report the circumstance for the orders of the magistrate. Reg. XX. 1817, sect. 11, cl. 6.

1705. The darogahs are prohibited from encouraging, or employing, without the express sanction of the magistrate, any goindahs or spies, who earn a livelihood by the profession of an informer; and they are to apprehend, and send to the magistrate, any persons who give out that they are employed as goindahs by the magistrate, or by the superintendent of police, unless such persons show a written authority from the magistrate or from the superintendent of police. The above provision is not to be construed as precluding the police officers from employing persons to trace offenders, who have eluded the pursuit of justice; or from encouraging persons to furnish information, by which robbers or other known criminals may be discovered and apprehended. On the contrary the darogahs are to encourage such persons to communicate all the information possessed by them, and are to report to the magistrate any instance of meritorious service on the part of any such individual, by which offenders are brought to justice, whether the individual has personally exposed himself to trouble and risk in securing the offender, or has merely supplied the necessary intelligence to the police officers.(a) Reg. XX. 1817, sect. 11, cl. 7.

Police officers are not to employ professional spies; and are to apprehend persons giving out that they are employed by the magistrate as goindahs. But they are to encourage persons to give information.

1706. It has been a general practice for bawds, keepers of brothels, and other persons who retain young females for the purposes of prostitution, and for persons moving loundies or alleged slave girls from place to place, to register at the nearest thana the names of all those, whom they purchase, procure, or entice to remain with them. Darogahs and other police officers are strictly prohibited from keeping any such register, or allowing any list of such girls to be delivered to, or the girls to be brought before them at any place whatever, as such a practice leads to a belief that the police have authority to interfere with such persons, and to give their alleged owners an illegal power over them, while it is besides open to many other kinds of very gross abuse. Any police officer disobeying this injunction is to be immediately and finally removed from his situation. C. O. Sup. Pol. L. P. No. 18 of 1841.

Police officers are not to allow the registration before themselves of girls kept for the purposes of prostitution.

1707. Any police officer apprehending the female relations or connections of persons accused of offences, or detaining them in custody on insufficient grounds, is to be punished by fine or removal from office; and any officer punished more than twice for this offence is to be removed altogether from the police, and the case reported to the superintendent of police in order to prevent his future employment. C. O. Sup. Pol. L. P. No. 9 of 1842.

Female relations of persons accused of offences are not to be apprehended.

1708. Police officers are prohibited from interfering in regard to the transfer of cattle and other goods bought and sold. Const. No. 747.

Interference in the transfer of cattle and goods is prohibited.

(a) "I also wish, but I fear in vain, that the darogahs without encouraging goindahs could be induced to pay some attention towards the acquirement of knowledge of their jurisdictions, so as to have some idea of those amongst the community who live by plunder and theft. I believe that the agricultural classes in these provinces are not, unless driven to the act by famine, addicted to crime, but that they are more free from such pursuits than the generality of the same class in other countries. It is the lower castes, given to drinking, separated from the rest of the people, and degraded in all their habits from the prejudices against them, who are the principal participators in the graver offences against property, and in burglaries and thefts. These men are well known to the village communities; their herdings together, sudden accession of money always spent in debauchery, cannot be concealed; but unfortunately from this class our chokeedars are principally drawn; and it is owing to this village watch, and to the apathy or worse of the police in making enquiries regarding them, that so many crimes are committed with impunity." Extract from police report L. P. for the first 6 months of 1841, para. 708.

Cattle trespass.

1709. Police officers are not authorized to levy fines on account of cattle trespassing. Const. No. 1176.

Dagees are not to be made to sleep under surveillance.

1710. The system of compelling all dagees and tekorahs to sleep under the surveillance of the police, or zumeendars, is prohibited. Govt. order on police report for the 1st six months of 1838, page 230. C. O. Sup. Pol. L. P. No. 14 of 1839.

SECTION V.

OF CHARGES NOT COGNIZABLE BY POLICE OFFICERS.

Of what offences police officers are prohibited from taking cognizance.

1711. Darogahs and other native officers of police are prohibited, under pain of dismission from office, from taking cognizance of any charge of adultery, fornication, calumny, abusive language, slight trespass, or inconsiderable assault. Reg. XX. 1817, sect. 12, cl. 1.

Charges of abortion not to be investigated by the police unless death ensues.

1712. Charges of abortion, or of procuring it, are not of a heinous description, unless death ensues; and where this is not the case, such cases partake of the nature of those specified above, and should therefore not be investigated by police officers without the special orders of the magistrate. In general the investigation of such charges should be conducted by the magistrate, rather than by the police officers. C. O. No. 303 of vol. 1. N. A. R. vol. 1, page 349 *note.*

1713. Such charges may not be entered into by police officers, although the enquiry originated in the discovery of the body of a murdered infant, the one case having no connection with the other. N. A. R. vol. 2, page 464.

Application of the above rule to charges of rape.

1714. Although rape is among the offences which the magistrate is prohibited from referring to the police by Reg. VII. 1811, yet as it is not mentioned in the above provisions among the charges not cognizable by them, such case may now be legally referred to them for investigation, or may be preferred directly at the thana. Const. Nos. 1174, and 1365.

No enquiry to be made in cases of accidental fires.

1715. Police officers are strictly prohibited from making any inquiries into the circumstances of fires, except when charges of arson are preferred to them. C. O. No. 85 of vol. 2.

Police not to interfere in petty offences, except as required by the regulations.

1716. Police officers are not to interfere with petty offences in any way which is not positively required by Reg. XX. 1817, or other regulation enacted for their guidance. C. O. No. 331 of vol. 1.

Police officers how to proceed on such charges being preferred.

1717. Persons preferring to the native police officers charges of the nature specified above, are to be referred by those officers for redress to the magistrate's court, and informed that cognizance cannot be taken of their complaints at the thana; and the darogah or other police officer, to whom any such charge is presented in writing, is to record in the thana diary (*v. para.* 1650) the name of the complainant, the nature of the charge, and the date on which it is rejected. The date and ground of rejection is also to be endorsed on the written plaint to be returned to the complainant. Reg. XX. 1817, sect. 12, cl. 2.

1718. The darogahs and other police officers are likewise prohibited from admitting compromises, or razeenamahs, in any cases; and from interfering in any matter which is not expressly provided for in this, or in any other regulation; as well as in all cases from passing sentence upon any complaint; from imposing a fine, or inflicting any punishment; and from making any exaction from the prosecutor or the accused, or their respective witnesses, or from any other persons whatsoever. Reg. XX. 1817, sect. 12, cl. 3.

Police not to admit compromises, or to interfere in any matter not authorized, or to inflict punishment, or to exact money.

1719. Police officers are prohibited from suffering accusations of heinous offences(a) to be settled by private adjustment; and are enjoined to bring all such cases to the knowledge of the magistrate. In this case, the prisoner allowed a thief to compound his offence; but his motive in so doing not being considered corrupt, he having officially reported the circumstances, he was merely reprimanded. N. A. R. vol. 1, page 180.

Heinous offences are not to be settled by private adjustment.

SECTION VI.

OF CHARGES COGNIZABLE BY POLICE OFFICERS.

1720. On receipt of any charge or information of murder, robbery, theft, burglary, homicide, maiming, wounding, actual affray, or other heinous offence, not excepted by this regulation from the cognizance of the police darogah, the statement of the prosecutor or informer is to be certified on oath, or solemn declaration after the forms No. 5 and 6 of appendix C*; and such enquiry is to be made as is necessary to elucidate the circumstances of the case, and if there are any witnesses to the fact, or persons acquainted with the particulars, they are to be questioned, without oath, either privately and apart, or publicly, as appears most conducive to the attainment of the truth. Reg. XX. 1817, sect. 13, cl. 1.

Enquiry to be made into the circumstances of the case, and witnesses to be examined.

* *v. para.* 359.

1721. Police officers are strictly prohibited from receiving criminal charges unattested by oath [solemn affirmation]. A strict adherence to which rule, particularly in a case like the present [abortion], appears essential for the protection of individuals against malicious and unfounded accusations. N. A. R. vol. 1, page 349.

The charge must be made upon oath.

1722. As the offences of forgery, or procuring the commission of it, come clearly within the general description of heinous offences, not excepted from the cognizance of a police darogah on a charge or information on oath to that effect before him, he is bound to proceed to the investigation of such charge in conformity with the general rules prescribed for his guidance. C. O. No. 303 of vol. 1.

Darogahs must investigate all cases not excepted from his cognizance.

1723. In cases of burglary and theft, unattended with personal violence, it is not lawful for darogahs or other police officers to make the local inquiry heretofore required by sects. 13 and 15, Reg. XX. 1817, or to apprehend persons suspected of such offences, unless a petition on unstamped paper is presented to them by an individual injured,(b) requesting

Police officers cannot investigate cases of theft or burglary without written request for prosecution.

(a) In cases of theft and burglary, the person defrauded is now not obliged to prosecute; and it seems that in such cases under the present law compromises are to a certain extent allowable. See para. 1727.

(b) By Mahomedan law a thief cannot be punished even on his own confession, unless the person robbed comes forward to prosecute. *Hed. Trans. vol. 2, page* 112.

that a search may be made for the property stolen, or that the offender or offenders may be brought to punishment; or unless an express order to adopt measures for those purposes is received by them from the magistrate to whom they are subordinate. Reg. II. 1832, sect. 2, cl. 2.

The petition requiring interference of police in such cases must be written.

1724. It is not sufficient that the complainant appears in person and deposes to the theft or burglary; he must present a written petition, and that petition must contain not only a statement of the fact, but also a specific request either that search may be made for the stolen property, or that the offenders may be apprehended and brought to punishment. Const. No. 708.

The suffering parties need not report simple cases of burglary and theft.

1725. In cases of burglary and theft unattended with personal violence, the suffering party is not bound to report the case to the police, unless he is a zumeendar, and has to report the occurrence in that capacity. Const. No. 1338.

Chokeedars are to report all cases which come to their knowledge.

1726. Chokeedars are not exempted by these rules from the duty of reporting the commission of such offences to the police, who are still bound to report all cases that come to their knowledge to the magistrate. But the magistrate should make use of other sources of information than his police officers to discover crimes, and should use his utmost endeavors, by conciliation and kindness, to procure the co-operation of respectable landholders and their agents in the detection of offenders. C. O. No. 130 of vol. 2.

When darogahs may refrain from apprehending and forwarding prisoners accused of theft or burglary.

1727. Darogahs and other police officers are empowered to postpone apprehending and forwarding to the magistrate, pending the receipt of his orders, persons charged with theft, whether attended with burglary or otherwise, provided it appears that the offenders have not used any personal violence in the occurrence; and provided that the parties, against whom the offence has been committed, express their desire that the offenders should not be apprehended and conveyed before the magistrate; provided also that the offenders have not previously been actually guilty of, or suspected of having committed theft, or burglary, or robbery. Reg. XII. 1818, sect. 7, cl. 1.

But every such case is to be reported to the magistrate, who is to decide whether it is to be investigated.

1728. Every case of this nature is to be fully and immediately reported by the police officers to the magistrate, who is either to call for any further information which he judges proper, or is at once to determine, according to the circumstances of the case, whether it is or is not necessary for the ends of justice that the charge should be regularly investigated, and is to issue his orders accordingly. Reg. XII. 1818, sect. 7, cl. 2.

The magistrate may always direct inquiry to be made.

1729. Though a police officer cannot make enquiry into unaggravated cases of burglary and theft without a written application from the injured party, yet the magistrate may direct the police officer to make the enquiry whenever he considers it advisable to do so.(a) Const. No. 1354.

By what circumstances the discretion of the magistrate is to be guided in such cases.

1730. In the exercise of that discretion the magistrate is to be governed by any extenuating circumstances which appear, such as the youth of the offender, his having been prompted to the offence (more especially in times of scarcity and famine) by extreme distress, and by his character appearing to have been previously respectable. Under less

(a) "Indiscriminate investigation into these cases is never productive of good effect, whilst it inflicts much inconvenience on the people." *Opinion of Sup. Pol. in police report for the 2nd six months of* 1841, *para.* 5.

favorable circumstances the magistrate is also to attend to the important object of preserving the honor of families, when the offender is nearly connected with the party who has suffered the injury, and the latter is anxious to exempt the offender from the infamy of a public ignominious punishment. Reg. XII. 1818, sect. 7, cl. 3.

Rules for the recording of evidence by the police officers.

1731. It is not to be considered necessary to take down in detail the questions and answers of the witnesses, but the substance of any material information obtained from them is to be reduced to the form of a sooruthal or kyfeeut, which document is to be authenticated by the attestation of the persons examined, and transmitted to the magistrate under the signature of the police officer, by whom the inquiry is made; the evidence of the eye-witnesses being distinguished in the report, from that of persons deposing from hearsay. Reg. XX. 1817, sect. 13, cl. 2.

Depositions of the informant and plaintiff to be taken at length; and what particulars to be noted.

1732. In all cases cognizable by the police, the depositions of the informant or plaintiff, or of both, are to be immediately taken at length; the police officers being careful to enquire from them particularly what they saw themselves,—what they learn from others,—who the persons were from whom they learnt it,—the prosecutors' witnesses, and what evidence each witness is supposed to be capable of giving. In cases of dacoity, highway robbery, theft and burglary, the list of property lost must invariably accompany the plaintiff's depositions; and the above papers must be forwarded to the magistrate immediately on being received, or at the latest within 12 hours from the period of their being written. C. O. No 138 of vol. 3, para. 3, rule 1. C. O. Sup. Pol. L. P. No. 19 of 1843.

Sooruthal to be sent to the magistrate immediately in place of report.

1733. The sooruthals required in sects. 14 and 15, Reg. XX. 1817, or in cases of dacoity describing the appearances presented, and the facts brought to light in a *primâ facie* inquiry, are to be sent to the magistrate, in place of a report, the moment they are drawn up. C. O. No. 138 of vol. 3, para. 3, rule 2.

Summary of depositions of witnesses.

1734. The depositions of witnesses are not to be detailed in the papers sent to the magistrate, and the summary of them is to be given in the simplest form. For example, in a case of highway robbery with murder :—

Nuzzer Allee, Peer Bux, and Govindram deposed to having witnessed the deed;—

Doorga, Ewoz Jan, and Ruttun recognize the property;—

Sheolal and Gooroo Das witnessed the search of the prisoner's house;—

Sujut Ali and Gungadeen saw the prisoner running off with a drawn sword in his hand;—

Janokia Dosadh Chokeedar arrested the prisoner, and saw marks of blood on his clothes.

At the bottom of this summary, the darogah is to enter the names of those witnesses whom he examined, but who professed ignorance, or gave evidence so unimportant as not to require their being sent in. C. O. No. 138 of vol. 3, para. 3, rules 4 and 5.

Grounds for sending in prisoners to be noted in the chalan.

1735. In sending in the prisoners, at the close of an enquiry, the darogah is to enter his grounds for so doing (without any recapitulation of evidence) in the column for remarks on the chalan No. 2 of appendix to Reg. XX. 1817, (No. 12 of appendix C). C. O. No. 138 of vol. 3, para. 3, rule 6.

Reports to be concise and clear; and all delays to be severely punished.

1736. The darogahs are informed that all excuses for delay in preparing and copying out voluminous reports being obviated by the above rules, any breach of the regulations in the detention of arrested persons, or any slowness in the enquiry, will be severely dealt with. They are also to report concisely, but clearly, all important occurrences which take place within their jurisdiction, considering that an important part of their duty. C. O. No. 138 of vol. 3, para. 3, rule 8.

What report is to be made in cases which are not proved.

1737. In cases when the darogah does not think the case sufficiently proved to warrant the transmission of the accused parties to the magistrate, he is to send in the *substance* of the evidence of each witness; the statements of the plaintiff and defendants, the latter taken at length; and a clear statement (without recapitulating any evidence) of the grounds of his opinion for releasing the accused. C. O. No. 138 of vol. 3, para 3, rule 9.

In certain cases a sketch of the spot is to be prepared; and date and time of occurrence to be noted.

1738. In cases of murder, gang robbery, burglary attended with wounding, or other violent crime, where the circumstances of the case may be elucidated in a greater degree by a sketch or plan of the spot, the same is to be prepared, if it can be done without subjecting the inhabitants to inconvenience, and submitted with the report. The police officers are also to be careful to ascertain, in all cases, the exact date and time of the day or night when the offence charged was committed; and are to record the date according to the Bengal, Fussily, or other era current in the district. Reg. XX. 1817, sect. 13, cl. 3.

Darogahs are not to administer oath except in particular cases.

1739. Darogahs are prohibited from swearing witnesses to the truth of their depositions on any local investigation which is made by them into the circumstances of any murder, robbery, or other crime, or in the performance of any other of their duties, unless the same is expressly sanctioned by the provisions of a regulation applicable to the case. Reg. XX. 1817, sect. 13, cl. 4.

Darogahs are to endeavour to collect all evidence, and to secure the attendance of witnesses so as to prevent delay.

1740. The officers of police are to endeavour, as far as practicable, to complete the inquiry in the first instance, and to collect all attainable evidence, and to bind over all the witnesses, necessary for the trial, to appear before the magistrate, at the time when the report may reach the magistrate's court, in order that the case may be tried without unnecessary delay. The darogah is to send in with the chalan or despatch any burkundazes, or other subordinate police officers, whose evidence is necessary on the trial of the case; and if the whole of the witnesses cannot be found at the time of transmission of the chalan, the darogah is to endeavor to collect them, and is to send them in without waiting the instructions of the magistrate. Reg. XX. 1817, sect. 13, cl. 5.

When the offenders are unknown, the witnesses are not to be sent in without the order of the magistrate.

1741. In cases where the offenders are unknown, or though recognized have not been apprehended, the prescribed local inquiry is notwithstanding to be made without delay, and the police darogah is to transmit an immediate and full report of the result to the magistrate for his information and orders. But the witnesses are not in such cases to be sent to the magistrate, nor bound over to attend him without his special instructions for the purpose. Reg. XX. 1817, sect. 13, cl. 6.

Description of absconded offenders to be carefully given.

1742. In all cases where the offender is known and has absconded, the police officer conducting the enquiry is to ascertain and describe the person of the offender, specifying also his name, and that of his father, as well as his usual place of residence, in order that he may hereafter if necessary be fully identified. Reg. XX. 1817, sect. 13, cl. 7.

1743. If, in the conduct of an inquiry, the person accused or suspected appears to have been guilty of more than one offence cognizable by police officers,—or if any misconduct or neglect in matters of police attaches to any zumeendar, farmer, local agent, village watchman, or other person whose duty it is to aid the police,—the darogah is to institute a distinct enquiry on each case, the result of which is to be transmitted to the magistrate in separate reports and despatches. Reg. XX. 1817, sect. 13, cl. 8.

Separate report if two offences are proved, or if zumeendar or chokeedar is guilty of neglect.

1744. Whenever any person is apprehended and sent to the magistrate's court under the provisions of this regulation, and it is known to the darogah, or other officer presiding at the thana, that such person has been apprehended on a former occasion by the police on any other account, the darogah reporting on the case, which is the ground of his present apprehension, is also to state the offence for which the prisoner was arrested, and if practicable is to ascertain from the thana papers and report the year and date of the record of the case referred to. Reg. XX. 1817, sect. 13, cl. 9.

When defendant has been formerly apprehended; it is to be noted.

1745. The darogahs, when they proceed from their thanas for the purpose of making any local inquiry, or for the performance of any other public duty, are to state in their reports the date and time of their departure from the thana station, and the date and time of their arrival at the place of their destination, and also of their return to the thana. The month and year to be used on all such occasions, as well as generally in the reports of the darogahs, are to be those of the current era of the district, whether the Bengalee, Fussily, or Willaity. Reg. XX. 1817, sect. 13, cl. 10.

Rules when darogahs leave their thanas.

Dates to be noted in the current era of the district.

1746. The system of prohibiting darogahs from leaving their thanas without permission, except on the occurrence of heinous offences, is bad, and ought not to be pursued. Govt. order on police report for 1st six months of 1838, page 226.

Darogahs may leave their thanas without permission.

1747. The darogah when engaged in the mofussil is to forward daily to the magistrate a memorandum of his proceedings in the most concise form. For example:—"May 2, 1843. Passed the night in the village cutchery at Syedpore; at 10 A. M. proceeded to Mouzah Ramnugger, and examined the putwarree, head ryots and others, named in the margin, regarding the bad characters in their village, and their whereabouts on the night of the robbery: returned to Syedpore at 5 P. M."—"May 3, 1843. Arrested Sheo Lal, and Deen Tewaree; took their replies, and confronted them with the plaintiff Gungadeen and the witnesses named in the margin, who recognized them as concerned in the dacoity; searched their houses, and found property as per list recognized by the prosecutor and his witnesses." C. O. Sup. Pol. L. P. No. 19 of 1843.

When darogahs are away from their thanas, they are to send daily reports to the magistrate.

1748. On proceeding to investigate any serious case, the darogah is to send forthwith to the superintendent of police a notice of his departure, stating the nature of the crime, the name of the accused as far as then ascertained, and the names of the persons or person giving the information.* On closing the case he is to report, if he has sent in any prisoners in the form No. 2 of Reg. XX. 1817, the parties sent in, the dates of their several apprehensions, and other circumstances laid down in that statement;—or if he has not procured evidence to justify his sending in the accused, he is to forward to the superintendent, in as concise a form as practicable, the grounds on which he has exercised his discretion, in such manner avoiding all recapitulation of evidence and unnecessary verbiage. It is the

What reports are to be sent by the darogah to the superintendent of police, in serious cases.

* *v. para.* 1683.

Magistrate to keep a strict watch over his police.

duty of the magistrate to keep a strict watch over the proceedings of his subordinates, so as to be able to furnish the superintendent of police with such information regarding their proceedings as he thinks necessary to call for. C. O. Sup. Pol. L. P. No. 13 of 1843.

Remarks of the superintendent of police on the propriety of magistrates ordering second investigations.

1749. With regard to the mode of investigating cases the superintendent of police recorded the following remarks. "The description of cases wherein the police are apt to misbehave is generally in regard to suspicious deaths, accusations of miscarriage of females by drugs, and other similar crimes. In such cases the statements sent in by the police are often of a doubtful nature, and it is perfectly justifiable and right to order a second investigation; but there should be no threat, and no indications to lead the people entrusted with the second inquiry to believe that their credit and service depend upon proving the case instead of proving the truth. To order investigation after investigation, and to punish the darogahs for want of success, not only tends to induce the belief that the case has been made up for the nonce, but destroys the possibility of any credit being given to evidence, although in reality correct and true." Police report for the 1st six months of 1838, para. 79.

SECTION VII.

OF INQUESTS.

On receiving information in certain cases the darogah is to proceed to the spot.

1750. In all cases of murder, unnatural or suspicious death, or violent and dangerous wounding, the darogah is to make it an invariable rule, immediately on receiving information, to repair in person to the spot on which the dead body, or person wounded, has been found; or, if prevented from going personally, is to depute a proper officer; and on such occasions the following rules are to be strictly observed.(a) Reg. XX. 1817, sect. 14, cl. 2.

Private inquiries to be made before holding inquest.

1751. They are to question privately in the first instance any relations, connexions, friends, or neighbours of the deceased, or of the person wounded, who may be able to state the circumstances of the case; and they are to endeavour to collect, before the inhabitants assemble for the public inquest, such information as may guide their inquiries in the conduct of their investigation. Reg. XX. 1817, sect. 14, cl. 3.

Persons dangerously wounded to be examined.

1752. They are to question the individual wounded, and to require him, if he is able to speak, to name and describe on solemn affirmation the person by whom he has been wounded, the names of the persons present when the act was committed, and, generally, the circumstances under which the act was committed. Reg. XX. 1817, sect. 14, cl. 4.

(a) When a person is found dead in any place, and it is not known who was the murderer, and his heir demands a satisfaction for his blood from the inhabitants of such place, or from any number of them not specifically named, fifty of the inhabitants selected by the heir must be put upon their oaths, and depose to this effect —"By God I did not kill him, nor do I know his murderer." *Hed. Trans. vol. 4, page* 427.—The above describes the only inquest known in Mahomedan law.

1753. They are to examine the body of the person wounded, or dead body, with a view to ascertain the number of wounds or other corporal injuries; the length, breadth, and depth of each; with what weapons the wounds or hurts have been given, and the parts of the body in which they have been received; and they are to record the same either at the foot of their sooruthal or report, or on a separate paper to be annexed to the report. Reg. XX. 1817, sect. 14, cl. 5.

Rules for inspecting the body of deceased or wounded person.

1754. They are to describe particularly the spot on which the wounded person or the dead body has been found; and they are to report whether the crime appears to have been committed on the spot, or whether the individual wounded, or dead body, appears to have been brought and laid there; also in cases of alleged suicide or accidental death, whether the circumstances under which the body is found are such as to warrant a conclusion, that the deceased met with his death from his own hands, or by misadventure, or whether any, and what grounds exist for believing the deceased to have been killed by the hands of others; and further, they are to ascertain the name of the person wounded, or of the deceased, if any person present should recognize him. Reg. XX. 1817, sect. 14, cl. 6.

Rules for inspecting the spot in which the body of deceased or wounded person has been found.

1755. If the person killed appears to be a stranger, and his name is not known, they are to endeavour to ascertain where he was last seen, or where he slept the night before. Reg. XX. 1817, sect. 14, cl. 7.

If the deceased is a stranger.

1756. In cases in which the offenders are not immediately discovered, or the cause of the murder or unnatural death or wounding is unknown, the police officer conducting the inquiry is to endeavour to trace whether any enmity, ill-will, jealousy, or other cause of dissension subsisted between the wounded, or deceased, and any other person or persons in the neighbourhood, and, if so, the particulars of the disagreement; when and under what circumstances the wounded, or the deceased, and the persons said to bear him ill-will were last seen in company, and whether any and what angry expressions were used by the parties; moreover in cases, in which there is reason to believe that the unknown offender has received any wound or other corporal injury from resistance in the perpetration of the crime, they are to question the hujjams, village-surgeons, washermen, or other persons residing in the vicinity, who from their profession are likely to afford information leading to the discovery of the offender in such cases. Reg. XX. 1817, sect. 14, cl. 8.

If the offenders are unknown, to ascertain whether any person bore enmity to the deceased or wounded person.

Enquiries to be made when the unknown offender has been wounded.

1757. The above inquiry is to be made and committed to writing in the presence of creditable people, resident on the spot or in the neighbouring villages; and the police officers are to require a sufficient number of persons present to subscribe their names to the paper, which is likewise to be attested by their own signature, and forwarded without delay to the magistrate. Reg. XX. 1817, sect. 14, cl. 9.

The above inquiry to be written as a sooruthal, and sent to the magistrate

1758. The sooruthal above required is to be sent to the magistrate, in place of a report, the moment it is drawn up. C. O. No. 138 of vol. 3, para. 3, rule 2.

immediately, in place of a report.

1759. In cases of murder it is the duty of the police officers to endeavour to obtain and secure the weapon or instrument with which the crime has been committed, in order that the same may be produced and identified at the further stages of the enquiry or trial for the offence. Reg. XX. 1817, sect. 14, cl. 10.

In cases of murder the weapon to be procured.

Assistance to be procured for wounded person, who is not to be moved, until he is able to travel without risk.

1760. In cases of wounding, the police officer conducting the inquiry is to endeavour to obtain for the person wounded such surgical assistance as is procurable; and, if the wounds are severe, the individual wounded is not to be moved or sent to the magistrate's court, until he is able to travel without inconvenience or risk. The police officers are further directed to notify to the inhabitants, as occasion offers, that, in the event of any person being wounded by robbers or others, in such manner that he cannot be conveyed to the thana without hazard of his life, it is not necessary to remove such person from the place where he can be best taken care of, but that immediate notice is to be given at the thana, that the police officer may proceed to the spot and make the inquiry prescribed above. Reg. XX. 1817, sect. 14, cl. 11.

Disposal of body in cases of murder or unnatural death.

1761. In cases of murder or unnatural death, the darogah is, on ordinary occasions, when he has completed his inquiry, either to make the body over to the charge of the relations of the deceased, or to cause it to be buried or burnt on the spot, as the usages of the country and the religious persuasion of the deceased render proper: and it is not to be considered necessary to send the corpse for the inspection of the magistrate, except in cases of murder by poison, or on occasions where the injury sustained by the deceased is of a doubtful nature, requiring the inspection and report of a surgeon; in which cases, if the state of the weather and the distance of the magistrate's court admit of the body being transported without risk of putrefaction on the road, the darogah is to forward the corpse covered with a cloth, in the most decent and expeditious manner practicable, to the magistrate's place of residence.* Reg. XX. 1817, sect. 14, cl. 12.

* *For rule for guidance of the police of subdivisions in such cases, see para.* 594.

Principal persons of village to hold inquest in the absence of police officers.

1762. On all occasions when the timely attendance of the police officers cannot be obtained, the principal persons of the village are to hold inquests on the bodies of persons dying unnatural deaths; and they are to forward the same without delay to the magistrate, either through the nearest police darogah, or otherwise, as may be most convenient. C. O. No. 21 of vol. 1.

SECTION VIII.

OF INQUIRIES IN HEINOUS OFFENCES.

In cases of dacoity or other heinous crimes, the darogah is to proceed to the spot.

1763. In all cases of gang robbery, or other robbery by open violence, as well as in every instance of a heinous crime, attended with a violent breach of the peace or other circumstances of aggravation, the darogah, in whose jurisdiction the offence occurs, is if practicable to proceed in person to the spot without delay, transmitting an immediate report of the occurrence and of his departure from the thana for the information of the magistrate.* If unable to proceed in person, or if the case is not of a heinous nature, nor attended with circumstances of aggravation, the darogah is at liberty to depute a fit person from among the officers acting under him, to ascertain the facts and circumstances of the case, and to procure all the information which it is practicable to obtain for the discovery and apprehension of the offenders.(a) Reg. XX. 1817, sect. 15, cl. 1.

* *For reports to be sent to the superintendent of police, see para.* 1748.

(a) Under sect. 2, Reg. II. 1832, such inquiries are not to be made by police officers in cases of burglary and thefts unattended with personal violence except on the requisition of the party injured, or by express order of the magistrate. *See paras.* 1723 *et seq.*

Notice to be sent by the police *direct* to the superintendent.

1764. Notice of all heinous offences, and other information ordered to be furnished to the superintendent of police by the darogahs, is to be forwarded direct by the public dawk. C. O. Sup. Pol. L. P. No. 5 of 1838. *See para.* 1748.

Detail of inquiries to be made in such cases.

1765. The police officer, making local inquiries of the description specified above, is to be careful to ascertain and record the day and hour when the fact was committed, the situation of the place, the names and descriptions of any persons who have been recognized as the perpetrators of the crime, by whom such persons have been seen and known, and the names and descriptions of any persons suspected of being concerned in the offence committed, with the grounds of such suspicion. Also a full recital of the manner in which the crime has been effected, and in cases of robbery of the articles of property plundered; the direction in which the robbers have fled; whether they had torches, and any and what arms; whether they attempted to conceal their persons during the robbery; whether any arms or articles of property belonging to the robbers were picked up after the outrage; and if so, whether any person in the neighbourhood has recognized such articles; whether any number of persons were known to have assembled at any liquor shop, fakeer's muth, or other place immediately preceding the occurrence of the robbery, and if so the general character of such persons; whether the landholders and farmers or their local agents took any and what measures immediately after the occurrence for the discovery and apprehension of the offenders; whether the village watchmen were present, and shewed a proper degree of attention and alacrity on the occasion, or otherwise; whether there are any persons of notorious bad character in the neighbourhood, or persons who have before been punished for robbery and discharged from jail, and if so where such persons were at the time of the commission of the offence.(a) Reg. XX. 1817, sect. 15, cl. 2.

Such inquiries to be written in the form of a sooruthal, and forwarded to the magistrate immediately in place of a report.

1766. The foregoing inquiries are to be made and committed to writing on the spot in the form of a sooruthal or report, and in the presence of three or more creditable inhabitants of the neighbourhood, by whom it is to be attested, and the papers are to be forwarded without delay for the information of the magistrate. Reg. XX. 1817, sect. 15, cl. 3.

1767. The sooruthal is to be sent to the magistrate, in place of a report, the moment it is drawn out. C. O. No. 138, of vol. 3, para. 3, rule 2.

(a) "Although I think recognition of persons at the time of perpetrating a dacoitee is very properly looked on with suspicion in the courts, yet I think many circumstantial points are neglected and overlooked. The absence of the parties from their homes at the time of the dacoitee, their return with money beyond their usual means, their association with known bad characters, their real means of livelihood, are points which are too much overlooked, and which, if properly attended to, would go much to corroborate other proof. Most of the dacoits are known to the villagers and local police; the former will not take any part against them, partly to save trouble and partly from fear, so long as they keep their depredations to distant villages; the latter generally are paid for their silence; and the magistrate finds it most difficult to struggle against these obstacles."—"It is difficult to procure conviction on a charge of *intent* to commit dacoitee; something of course can be gathered from the arming and assemblage of the people, but the intent is in general to be ascertained only through the means of spies and informers. The evidence of such persons is received with great jealousy in the courts, and they usually have some portion of their own conduct to conceal or extenuate; and their characters will not generally stand the test of a cross-examination; and thus the charge falls to the ground. It would perhaps be more advisable in doubtful cases to investigate the characters of the parties engaged." *Remarks of the superintendent of police in police report for* 1845, *paras.* 343 *and* 381.

Police officers to caution persons present against suppressing evidence in the first instance.

Persons present at the commission of the offence to be encouraged to give evidence.

1768. It is further the duty of the police officers on occasions of the description abovementioned, as well as in cases of murder and unnatural death, to apprize the persons present at the inquiry, that their suppression or denial of any knowledge, which they possess relative to the perpetrators of the crime, will tend to invalidate their testimony, in the event of their deposing to such knowledge at a future period. They are at the same time to give encouragement to all persons, not accomplices or accessaries, who have been present at the commission of a crime, to make a full communication of every fact and circumstance within their knowledge respecting the offenders; and they are to take their information or evidence, with such precautions of secrecy as are deemed requisite, where persons supposed to have recognized any of the offenders appear to be deterred from publicly naming them, under fear of the consequences if the parties should not be apprehended. Reg. XX. 1817, sect. 15, cl. 4.

Every case of burglary, or theft, to be reported.

1769. The darogahs are invariably to report to the magistrate every instance of burglary and theft, which is brought to their knowledge or otherwise, as well as of the attempts in which the offenders have not succeeded in carrying off property. Reg. XX. 1817, sect. 15, cl. 5.

Accuracy to be observed in recording the date of the offence, and describing the circumstances.

1770. In cases of burglary, the police officer conducting the enquiry is to attend to the foregoing instructions regarding inquiries in cases of robbery, as far as they are applicable, and is to be careful to ascertain and report the time of the day or night at which the offence was perpetrated, and the means used in effecting an entry into the habitation; and, if by breaking or cutting through a wall, mat, or other partition, the length and breadth of the aperture; also whether the house or apartment into which a burglarious entry has been effected is used as a place of residence, or for the custody and preservation of property. Reg. XX. 1817, sect. 15, cl. 6.

Information to be required from the chokeedars, zumeendars and others.

1771. Police officers making inquiries in cases of robbery, burglary, and theft, are to require the village chokeedars, the landholders and their agents, and the inhabitants of the place where the offence was committed, to state whether they suspect any and what persons of having committed the offence; and, if so, the grounds of their suspicion; after which they are to take the necessary measures to ascertain how far such suspicions are well founded, and where the persons suspected have been at the time the crime was perpetrated. Reg. XX. 1817, sect. 15, cl. 7.

SECTION IX.

OF CONFESSIONS, AND TREATMENT OF PRISONERS.

Examinations of prisoners to be taken without oath in the presence of witnesses.

1772. Whenever any person is apprehended and brought before a darogah or other police officer under the provisions of this regulation, the examination of the prisoner is to be taken without oath in the presence of three or more credible witnesses, who are to attest the examination; and the police officer presiding at the enquiry is to question the prisoner fully regarding the whole of the circumstances of the case; the persons concerned in the commission of the crime; and, if any property has been stolen or plundered, the persons in possession of such property, or the place where it has been deposited. In the event of the prisoner's making free and voluntary confession, it is to be immediately written down, if practicable, in the language best understood by the person confessing, and in the presence of three or more credible witnesses, who can sign their names, and are not officers of police or connected with the thana establishment: if no persons can be found who are able to read or write, the most respectable persons in the village are to be required to bear witness, and to affix their mark in attestation of the writing. The party confessing, as well as the witnesses, are to be allowed to read the same when finished; or, if unable to read, the police officer recording the confession is invariably to read it over in the presence of the party and witnesses before it is signed and attested, and is to state at the foot of the paper the day of the week, date, hour, and place at which it is taken; the original confession, bearing the signatures of the party and witnesses, is invariably to be transmitted to the magistrate, and not a copy; and the police officer presiding at the inquiry, as well as the person by whom the confession is taken down in writing, are to subscribe their signatures to the paper in attestation of its authenticity. Reg. XX. 1817, sect. 19, cl. 1.

Rules in cases of voluntary confession.

Confessions how to be certified.

1773. Police officers are to certify confessions made before them in the same manner as magistrates, viz. "I hereby certify that this confession of —— was made by the said ———, and taken down in writing, and attested by the subscribing witnesses, before me, and in my presence, on the —— between the hours of —— and ——; that, to the best of my belief the confession was voluntary, and that no interference, directly or indirectly, on the part of any person likely to influence or intimidate the prisoner, was permitted." C. O. No. 54 of vol. 2, para. 21.

Language in which confessions are to be written.

1774. Implicit obedience is required to the above rule, that confessions are to be written down in the language best understood by the persons confessing. C. O. No. 242 of vol. 1.

What persons are to be required to witness confessions.

1775. Confessions of prisoners are to be taken at length. No persons employed about the thanas, as chokeedars, dosadhs, or chumars, or other such descriptions, are to be made subscribing witnesses by the police, under penalty of forfeiture of situation. These must always be respectable men of the place; and such, if possible, as can read and write; and they should be required to question the prisoner themselves, whether he has confessed voluntarily to the facts stated. C. O. No. 138 of vol. 3, para. 3, rule 3.

How the darogah is to proceed in summoning witnesses; and punishment in cases of refusal.

1776. A darogah is fully justified in summoning respectable persons for the purpose of witnessing confessions, when it is requisite; and in the event of such persons refusing to attend, or to attest a confession taken in their presence, he should submit a report of the case to the magistrate; who, after calling upon the parties for any explanation they may have to offer, is competent to pass such order on the case (within the general limitation of his authority) as appears proper. But the darogahs should be particularly cautious in the exercise of this power; and should avoid as much as possible summoning any persons, whose absence from their houses, with reference to their occupations and other circumstances, might be attended with serious inconvenience. Const. No. 101.

Compulsion, or holding out hopes or fears, to induce confessions is strictly prohibited on pain of exemplary punishment.

1777. No compulsion is to be used either towards parties or witnesses, for the purpose of obtaining any information whatsoever; and police officers are strictly enjoined not, on any occasion or under any pretext whatever, to encourage a prisoner apprehended upon a criminal charge to confess the same, or to excite the hopes or fears of a prisoner by holding forth prospect of pardon, or using threats, or otherwise persuading and intimidating the prisoner, with the view of inducing him to confess; any species of maltreatment inflicted on a prisoner or witness by a police officer, landholder, or farmer, or by any other person whatever, whether with a view to extort a confession or to procure information, is to subject the offender to exemplary punishment on conviction before the magistrate or sessions court. Reg. XX. 1817, sect. 19, cl. 2.

Confessions taken at night, or in any other place than the thana.

1778. Whenever a confession is taken at night, or at any other place than the police thana, the special reason for its having been so taken is to be stated in the darogah's report. Reg. XX. 1817, sect. 19, cl. 3.

Darogah may make private verbal examination;

1779. The foregoing provisions are not meant to preclude the darogah, or officer presiding at the inquiry, from making any private verbal examination which he deems requisite with the view of ascertaining accomplices, or discovering stolen property, or obtaining means of proof. Reg. XX. 1817, sect. 19, cl. 4.

and may take down in writing second examination.

1780. No regulation prohibits police officers from taking down in writing a second examination of a prisoner; and they would not be justified in refusing to record any declaration or confession, which the prisoner wishes to make. Const. No. 733.

Prisoners confessing to be kept separate.

1781. Prisoners confessing offences are to be kept apart from all persons in custody at the thana; and, if practicable, are to be forwarded to the magistrate's court under charge of a separate guard. Reg. XX. 1817, sect. 19, cl. 5.

Witnesses to be bound over to attend.

1782. Witnesses to confessions are invariably to be bound over by the darogahs to attend the magistrate on the arrival and examination of the prisoners at the sudder station, and the police officers are to be careful not to admit of any deviation from this rule. Reg. XX. 1817, sect. 19, cl. 6.

Prisoners how to be confined.

1783. Prisoners during their detention at the thana are to be confined within the thana house or guard room, or in some other convenient place of confinement, where they are not exposed to the open air. Reg. XX. 1817, sect. 19, cl. 7.

Stocks may be used for prisoners of dangerous character in the night only.

1784. Stocks may be used at the thanas during the night for the purpose of securing the persons of robbers and murderers, or other persons of dangerous character, or disorderly behaviour, or persons who have escaped from custody, until they can be forwarded

to the magistrate; but the darogahs are strictly enjoined under pain of dismission from office, not to place any individual in the stocks, except during the night time, and then only in cases of robbery and murder, or of previous escape from custody, or when the notoriety of the prisoner's character or his behaviour is such as to render this mode of confinement essential for his safe-guard. Reg. XX. 1817, sect. 19, cl. 8.

Prisoners may be forwarded in light handcuffs.

1785. The darogahs of police are further competent(a) to use handcuffs of a light construction, to be provided by the magistrates, (instead of fetters and ropes for the legs and arms) for the purpose of forwarding heinous criminals with safety to the magistrate's court. Reg. XX. 1817, sect. 19, cl. 9.

Darogahs strictly accountable for ill treatment.

1786. The darogahs are to be held strictly accountable for any ill-treatment which prisoners sustain whilst under their charge, and for any severity further than what is essentially requisite for securing the persons of such prisoners. Reg. XX. 1817, sect. 19, cl. 10.

Rate at which prisoners are to travel.

1787. Burkundazes escorting prisoners are, on ordinary occasions, to journey at a rate of not less than six, or more than eight coss per diem. Reg. XX. 1817, sect. 19, cl. 11.

How prisoners are to be secured at night while travelling.

1788. When alighting at any village for the night, the police officers having charge of prisoners are to report their arrival to the proprietor, farmer, or head man of the village, who is to point out a proper place for securing the prisoners during the night, and to require the village watchmen to afford their aid in guarding them. Reg. XX. 1817, sect. 19, cl. 12.

Diet money may be allowed to prisoners.

1789. In cases in which prisoners are unable to support themselves during their journey from the thana to the magistrate's court, the darogah is to advance such amount for diet allowance, as is necessary for their way-charges, not exceeding the rate of one anna per diem, reporting the same for the information and orders of the magistrate. Reg. XX. 1817, sect. 19, cl. 13.

Prisoners to be delivered by burkundazes to the nazir.

1790. On the arrival of the prisoners at the sudder station, the burkundazes charged with the despatch are to convey them to the foujdaree nazir, or to such other native officer as the magistrate appoints, in order that they may be secured in a lock-up house, until a report of the case can be perused by the magistrate; till which time one or more of the burkundazes, who have accompanied the prisoners, are to remain in attendance to be examined, if necessary, on any points relating to the case. Reg. XX. 1817, sect. 19, cl. 14.

Rules for the transfer of prisoners from one station to another.

1791. Prisoners, who are sent from the station of one district to that of another, or who are sent by a magistrate into the mofussil, for the purpose of being discharged, are to be sent, exclusive of other papers, with a written despatch unsealed, showing the name of the prisoner and his destination; and it is the duty of the darogahs to forward prisoners of this description according to the despatch which accompanies them under charge of the police burkundazes from thana to thana. A statement of all such cases, specifying the names of the prisoners and other particulars, is to be recorded in the thana diary. Reg. XX. 1817, sect. 19. cl. 15.

(a) In the Persian translation this word was originally rendered "*lazim khahud bood*," which made it incumbent on the police officers to use handcuffs; and it was accordingly altered to "*ikhtiaree darogah ast*." C. O. Nos. 28 and 41 of vol. 2.

No prisoner is to be detained at the thana more than 48 hours.

1792. The darogah and other officers of police are prohibited, under penalty of immediate dismission from office, from detaining any prisoners without sending them to the magistrate, beyond such time as is indispensably requisite for the inquiries directed by this or any other regulation; and if from any cause the inquiry cannot be completed within 48 hours after the arrival of a prisoner at a cutchery or station of the police officer, he is notwithstanding to be sent to the magistrate with a report of the case and a chalan drawn up according to the form No. 2 (No. 12 of appendix C.), a copy of which is to be given to the burkundaz, under whose charge the prisoner is forwarded, to be delivered to the nazir on his arrival at the sudder station. Reg XX. 1817, sect 19, cl. 16.

Strict attention to be paid to the above rule.

1793. "I would wish most particularly to call the attention of the magistrates to the necessity of preventing any police darogahs unnecessarily delaying the transmission of any arrested person to the sudder station. I have, in numerous cases brought before me, almost invariably found either extortion of money, procuring compulsory confessions, or abuse of the person of the prisoner if a female, or other malpractices, to have been the object in such illegal detention; which, besides being open to these objections, places in the hands of the darogahs the power of imposing duress of a very severe nature on parties brought before them, who may refuse to comply with their demands. No instance of detention beyond the period laid down by cl. 16, sect. 19, Reg. XX. 1817, should be allowed to pass unnoticed, and the darogah or other police officer should be made strictly accountable for any breach of the rules in this point." *Extract from police report L. P. for the first* 6 *months of* 1841, *para.* 707.

Magistrate may authorize further detention.

1794. A discretion is vested in the magistrate to authorize the detention at the thana of a party accused of a criminal offence, cognizable by the police, beyond the period specified above, when the measure appears to that officer absolutely necessary for the ends of justice; but it should be exercised with great caution, and only on very strong grounds. Const. No. 1167.

All apprehensions to be reported; and no person to be discharged except on bail.

1795. The officers of police are to report to the magistrate the cases of all persons apprehended within their respective jurisdictions, whether such persons have been admitted to bail or otherwise; and no person who is once apprehended is to be discharged except on bail, or under the special orders of the magistrate. Reg. XX. 1817, sect. 19, cl. 17.

Special attention to be paid to this rule.

1796. The superintendent of police requires especial attention to be paid to this rule, as the infraction of it is one of the chief means by which the police are enabled to extort money. C. O. Sup. Pol. L. P. No. 35 of 1838.

SECTION X.

MISCELLANEOUS RULES.

1797. The darogahs of police are uniformly to report to the magistrates, whenever any individuals, within their respective jurisdictions, entertain in their service any extraordinary number of armed men, or commence building or repairing any fort or gurhee, or collecting together any quantity of arms, ammunition, or military stores. Reg. XX. 1817, sect. 30, cl. 1.

All circumstances dangerous to the public peace to be reported.

1798. The darogahs are to prevent all encroachments on the public roads, and are at the same time to report the circumstances of each case for the information of the magistrate, and to record an abstract of the same in the thanadaree proceedings. Reg. XX. 1817, sect. 30, cl. 5.

Encroachments on public roads to be prevented and reported.

1799. The darogahs are to secure, and send to the sudder station of the district, all insane persons found within the limits of their respective jurisdictions, from whose insanity there is reason to apprehend any fatal or serious consequences, unless the friends of such persons agree to enter into engagements to adopt such precautions as shall prevent their doing mischief. In such case the police officer, to whom the engagements are tendered, is to refrain from securing the person of the insane individual, and to await the instructions of the magistrate, to whom the circumstances of the case are to be reported without delay. Reg. XX. 1817, sect. 30, cl 6.

Treatment of insane persons.

1800. The officers of police are enjoined to show every mark of personal respect and attention to judges on circuit, during their progress from station to station. Reg. XX. 1817, sect. 31, cl. 1.

Judges on circuit to be treated with respect.

1801. On the arrival of any European, not in Her Majesty's or the Honorable Company's civil or military service, who proposes to settle within the limits of any thana jurisdiction, the darogah is to report the circumstance for the information of the magistrate. Reg. XX. 1817, sect. 31, cl. 2.

Arrival of Europeans to settle to be reported.

1802. The police darogahs are, towards the close of each English year, to cause the form of statement, in English and the vernacular, No. 21 (No. 15 of appendix C) to be exhibited to all Europeans, not in Her Majesty's or the Honorable Company's civil or military service, residing within their respective jurisdictions; and are to require such Europeans to furnish for the information of the magistrate separate statements filled up according to the prescribed form either in English or the vernacular. Reg. XX. 1817, sect. 31, cl. 3.

Annual statement to be filled up by Europeans;

1803. The statements prescribed by the preceding rule are to be forwarded by the police darogahs to the court of the magistrate on or before the 5th of January in each year. Reg. XX. 1817, sect. 31, cl. 4.

and forwarded by darogahs to magistrate.

Assistance to be given in guarding despatches of treasure by revenue officers;

1804. The darogahs of police are enjoined to afford assistance, on application from the revenue officers, for the safe custody and conveyance of despatches of treasure; and to allow such despatches to be deposited during the night, for better security, within the house allotted for the thana. Reg. XX. 1817, sect. 32, cl. 1.

and by individuals.

1805. The darogahs are likewise, as far as their other duties admit, to afford protection to despatches of treasure belonging to bankers and merchants, on application from the person in charge of the same. Reg. XX. 1817, sect. 32, cl. 2.

Not required to endorse salt rowannahs.

1806. Police darogahs are not required to perform the duties prescribed by sect. 22, Reg. I. 1812 to prevent an evasion of the customs duties, *i. e.* endorsing the rowannahs of salt, &c. Const. No. 317.

Not to require certificate of leave of absence from sepoys on furlough.

Apprehension of deserters.

1807. The thanadars, police darogahs, chuprassies, &c., have no authority to call on native officers and soldiers on furlough for their leave of absence certificates, except under the immediate instruction of the magistrate. Commanding officers of regiments may apply for the aid of the civil authorities for the apprehension of deserters; and subordinate police officers, when duly authorized by the magistrate, are warranted in detaining persons suspected of desertion. C. O. No. 18 of vol. 2.

Darogahs to inculcate upon landholders and managers of lands their duties in giving information of crimes, apprehending offenders, and maintaining the peace.

1808. The police darogahs are to take every favorable opportunity, when employed on local inquiries, as well as on other occasions, of explaining to the zumeendars, talookdars, and other proprietors of land malgoozaree or lakhiraj; to the sudder farmers and under-renters of land, dependant talookdars, naibs, and other local agents; and to all native officers employed in the collection of the revenues and rents of land on the part of government or the court of wards; the duties incumbent on them, and the responsibility attached to them, to communicate to the magistrate and police darogahs, either publicly or secretly, all information which they obtain respecting the commission of murder, robbery, housebreaking, arson, or theft, within the limits of the estate or farm held or managed by them respectively; or respecting the resort of any known robbers of whatever description, or the residence of any notorious receiver or vender of stolen property within such limits; as well as to afford their assistance in the apprehension of all persons, for whose apprehension warrants have been issued by the magistrate; and generally to co-operate with, assist, and support the police officers of government in maintaining the peace, preventing as far as possible affrays and other criminal acts of violence, or apprehending the offenders under the rules and restrictions enacted and promulgated in the regulations. Reg. XX. 1817, sect. 33, cl. 1.

Darogah to be furnished with copies of regulations regarding the duties of such persons.

1809. To enable the police darogahs the more effectually and satisfactorily to perform the service thus required from them, the magistrates are to be careful to furnish them with copies of, or extracts from, all regulations in force on the points above adverted to, or any other immediately connected with the aid to be given by landholders, farmers, under-tenants, and managers of land, in support of an efficient police. Reg. XX. 1817, sect. 33, cl. 2.

SECTION XI.

OF PERSONS WEARING MILITARY DRESS, OR BADGES.

1810. All persons, whether European or native, within the Company's provinces (excepting such privileged persons as the government specially exempts from the operation of the rule contained in this section) are positively forbidden to dress any of their servants, either for the purpose of parade or of business, in the uniform of the Company's sepoys or lascars, or in a dress so nearly approaching to that uniform as to enable the persons wearing it to impose themselves on the country people for sepoys and lascars. Reg. XI. 1806, sect. 9, cl. 2.

No person is allowed to dress his servants in the uniform of sepoys.

1811. All natives, excepting those actually in the military service of the Company, or belonging to persons specially exempted by government from the operation of this rule, are forbidden to wear a dress similar to that mentioned in the foregoing clause. Reg. XI. 1806, sect. 9, cl. 3.

No person is allowed to wear such dress.

1812. Officers of every description employed in the service of the Company, who are allowed establishments of burkundazes, peons, and pykes, in their official capacity, or who have occasion to employ persons of any of those descriptions in such capacity, are prohibited from clothing them with a military dress. Reg. XI. 1806, sect. 9, cl. 4.

Civil officers are not to clothe their public servants in such dress.

1813. Native officers and sepoys, excepting subadars, jemadars, and serangs, even though in the service of the company, who temporarily reside or have occasion to travel in the interior parts of the country, unless employed on the public service, are forbidden to wear their uniform coats. Reg. XI. 1806, sect. 9, cl. 5.

Sepoys are not to wear their uniform while absent from their corps, unless on public service.

1814. With a view of giving full effect to the orders contained in the preceding clauses, the military commanding officers of stations, and of detachments in the interior parts of the country, and the magistrates, are authorized and required to deprive of a military dress any person who wears it contrary to these orders; unless it appears that such person is in the military service of the Company, in which case he is to be sent to the corps to which he belongs with a written complaint against him. The local officers of police are also empowered and directed to apprehend all persons of the above description, and to send them to the magistrate, who is to deal with them in the manner above prescribed. Reg. XI. 1806, sect. 9, cl. 6.

Persons disobeying these orders how to be treated.

1815. In pursuance of the above rules, the darogahs of police are required to apprehend and send to the magistrate all persons not actually in the Honorable Company's military service, or belonging to persons specially exempted by government from the operation of the above rules, who are found dressed in the uniform of the Company's sepoys or lascars, or in a dress so nearly approaching to that uniform as to enable the persons wearing it to impose themselves on the country people for sepoys or lascars. Reg. XX. 1817, sect. 30, cl. 2.

Police officers are to apprehend persons wearing military dress;

or sepoys wearing their uniform while on leave of absence.

1816. The local officers of police are empowered and directed to apprehend all native officers and sepoys, excepting subadars, jemadars, and serangs, wearing their uniform coats when not employed on the public service, and to send them to the magistrate. Reg. XX. 1817, sect. 30, cl. 3.

Punishment of persons wearing badges resembling government badges.

1817. No person is to wear, or to be accessary to the wearing by any other person of any chuprass or badge intended to resemble any chuprass or badge worn by servants of the government; and every person violating this rule is to be punishable by fine and imprisonment, on conviction before a magistrate, as for a misdemeanor. Act XVIII. 1835, sect. 2.

Punishment of private persons wearing badges, which do not bear the name of the employer.

1818. Every chuprass or badge worn by any person, not being a servant of the government, is to bear the name of the party by whom the wearer is employed; and whoever wears a chuprass or badge, or is accessary to the wearing such chuprass or badge, otherwise than in conformity to this rule, is to be punishable by fine and imprisonment, on conviction before a magistrate, as for a misdemeanor. Act XVIII. 1835, sect. 3.

SECTION XII.

OF THE ASSISTANCE TO BE GIVEN TO TROOPS, OR INDIVIDUALS, MARCHING.

Commandants of troops about to march are to give notice to collectors,

1819. Whenever a detachment of troops, or a single corps, is ordered to proceed by land or by water through any part of the Company's territories, the commanding officer is to give the earliest practicable notice to the collectors of revenue of the zillahs, through which the troops are to pass, of the probable time of their arrival within such districts respectively; together with information of the probable period of their arrival at the particular places where supplies are required, and a specification of the supplies which will be wanted. The commanding officer is likewise to notify to the collectors the probable period of the arrival of the troops at the rivers or nullahs, intersecting their march, where boats or temporary bridges may be necessary for crossing the troops and the baggage attached to them. The commanding officer is at the same time to communicate to the magistrates of the zillahs, through which the troops are to pass, the probable time of the arrival of the troops within their respective jurisdictions. Reg. XI. 1806, sect. 2.

and to magistrates.

Collector how to proceed in such cases:

1820. On receiving the notification above-mentioned, the collector is immediately to issue the necessary orders to the landholders, farmers, tehsildars, or other persons in charge of the lands through which the troops are to pass, for providing the supplies required; and for making any requisite preparations of boats, or temporary bridges, or otherwise, for enabling the troops to cross such rivers or nullahs, as intersect their march, without any impediment or delay. The collector is at the same time to depute a creditable native officer to accompany the troops through his jurisdiction, for the purpose of aiding in procuring the necessary supplies, and of facilitating the march of the troops. It is also the duty of such native officer to provide the troops with whatever bearers, boatmen, carts and bullocks

are indispensably necessary to enable the troops to prosecute their route. Should he experience any difficulty in the performance of this duty, he is at liberty to apply for assistance to the nearest police officer, who is directed to afford his aid in providing the number of persons and of carts and bullocks required. Reg. XI. 1806, sect. 3, cl. 1.

May apply for assistance to police officers.

1821. The latter part of the above clause is not superseded by Reg. VI. 1825, which merely confers additional powers on the revenue authorities, leaving the provisions of the former enactment, in regard to the assistance which police officers are required to render when applied to in such cases, exactly as they were. Const. No. 1049. C. O. No. 214 of vol. 2.

1822. Under the above provisions, every description of carriage of the nature therein referred to, whether kept for private use or for hire, is liable to be seized for troops on the line of march; but carriage kept for hire is to be invariably taken in the first instance, while that kept for private use should only be pressed on very emergent occasions. Const. No. 1049. C. O. No. 214 of vol. 2.

Any description of carriage may be seized for troops marching. But that kept for hire is to be taken first.

1823. The supplies furnished under the foregoing clause (including earthen pots, firewood, and every article of supply) are to be paid for by the persons receiving the same at the current bazar prices of the place at which they are provided: and all officers commanding detachments of troops, marching through any part of the Company's territories, are enjoined to make immediate enquiry into any complaints which are preferred to them by the persons furnishing such supplies, or in their behalf, against any person or persons under their command, and to afford such redress to the complainants as the nature of the case appears to require. Reg. XI. 1806, sect. 3, cl. 2.

Rules for the payment of supplies, and the settlement of disputes.

1824. Immediately on receiving the notification above mentioned, the magistrate is to transmit orders to the several police darogahs or other local officers of police, through whose jurisdiction the troops are to pass, to afford every assistance in their power to facilitate the march of the troops through their respective jurisdictions; and to co-operate as far as is necessary with the person deputed on the part of the collector in procuring the requisite supplies; as well as in adjusting any disputes which arise respecting the prices of the articles furnished, and in preventing any alarm to the inhabitants of the country.(a) Reg. XI. 1806, sect. 6.

Magistrate how to proceed on the receipt of such information.

1825. Officers commanding detachments of troops, or single corps, on their march through any part of the Company's territories, are already required, by general orders, dated February 1st, 1788, to report to the commander-in-chief in what manner the troops have been supplied in passing through the districts lying in their route. In like manner, the collectors are required to report to the board of revenue, and the magistrates to the nizamut adawlut, for the information of government, any complaints which are made to them of the misbehaviour of the troops, when such complaints appear to be well founded and of sufficient importance to require communication to government. Reg. XI. 1806, sect. 7.

Reports to be made to the commander in chief, the board of revenue, and the nizamut adawlut in cases of complaint.

(a) The above orders are distinctly pointed out to officers by the commander-in-chief in general orders, dated July 25, 1822.

Military officers not with detachment of troops, and other persons, may apply to police officers for assistance.

1826. Whenever any military officer, not commanding nor proceeding with a corps or detachment of troops, or any other person (whether European or native) not restricted by government from passing through the country, is proceeding within any part of the Company's provinces, either on the public service, or on his private affairs, and is in need of assistance during his route to enable him to prosecute his journey, he is at liberty to apply to the nearest local officer of police to aid him in providing any requisite bearers, boatmen, carts, or bullocks, or any necessary supplies of provisions, or other articles. On receiving an application of the above nature, the police officer to whom it is made is to furnish the aid required or to cause it to be furnished by the proper person or persons; provided that a sufficient number of persons who have been accustomed to act as bearers, or boatmen, or the requisite number of carts and bullocks not exclusively appropriated to the purposes of agriculture, and occasionally let for hire, can be procured within his jurisdiction. But all police officers are strictly forbidden under pain of dismission from office, on applications of the above nature, to compel any persons not accustomed to act as bearers, or boatmen, to serve on such occasions, or to furnish a traveller or cause him to be furnished with bullocks or carts kept for private use and not for hire, or exclusively appropriated to the purposes of agriculture. Persons so employed, and the persons in charge of carts and bullocks so provided, are to be at liberty to return from the first police station in the next zillah, through which the corps or detachment is to march, unless a voluntary engagement to the contrary is entered into by such persons. The police officers are further enjoined to be careful that a proper compensation for the bearers, boatmen, carts or bullocks employed, and a just price for the provisions or other articles provided, is secured to the persons entitled thereto. For this purpose the police officers are authorized to adjust the rate of hire to be paid for the bearers, boatmen, carts or bullocks required; and the price of any articles provided; as well as to demand that the whole or a part, according to the circumstances of the case, be paid in advance. Should any traveller refuse to comply with the adjustment or demand so made by a police officer, he is not to be entitled to any assistance from the officers of government under this regulation. Reg. XI. 1806, sect. 8.

Police officers may afford assistance and compel the service of bearers, boatmen, &c. under what restrictions.

Persons whose service is so compelled may return from the first police station in the next zillah.

Police officers are to to be careful that such persons receive proper remuneration.

Coolies, begarees, &c. are in no case to be pressed.

1827. The practice of pressing or compelling individuals, whether under the denomination of coolies, begarees,(a) or of any other denomination, to carry burthens either for

(a) "As to what is intended to be expressed generally by the term 'begar', I believe it would be difficult to furnish a precise definition. I have heard many fanciful derivations of the term. I myself thought until lately that it was derived from the Sanscrit, and used in the Hindostanee language only; but I find it in the *Beorhani Qatia*, page 171, and the following definition is given:

کار فرمودن بےمزد بود یعنے کار بفرمایند و اجرت ندهند

Where service is compelled by force, it is obvious that the remuneration must depend upon gratuity. I believe that the word is used generally to express forced service, whether paid for or not; and I also believe that begars are generally paid for their service (if they choose to wait for payment), although perhaps not adequately, as, on such occasions, there is no regular contract of *Do ut facias* entered into between the parties. There is a familiar proverb among the higher classes of natives, implying that a precarious employment is better than total idleness.

بیکار سے بیگار اچھا ہے

I doubt whether the justice of the saying is acknowledged by those who heretofore had practical experience of the effects of the system; but my opinion is that no villager in this country would voluntarily act as a carrier, with the certainty even of a liberal compensation for his labor." *Report of the magistrate of Shahabad, N. A. R., vol. 2, page 97.*

the public service or for the convenience of private individuals, is hereby positively prohibited; and the magistrates are required to adopt all legal means in their power to put an entire stop to the practice in question by inquiring fully into all complaints which are brought before them, and by subjecting persons regularly convicted of the offence to such penalties, as on a consideration of the circumstances of the case appear to be proper and consistent with the powers vested in the magistrates by the general regulations. Reg. III. 1820, sect 3.

Punishment of persons transgressing this rule.

1828. In reply to a question whether the above provision was "intended to extend to hackery drivers, bullock drivers, banghy-wallahs, and bearers, as well as other descriptions of persons usually pressed for the assistance of travellers and marching troops, or was merely applicable to coolies or porters," the nizamut adawlut declared that it was restricted to prohibiting compulsory exaction of the service of individuals as porters or coolies in aid of travellers or marching troops; that the prohibition extends, first, to such service being compelled by travellers or marching troops; and secondly, to its being compelled for them by the civil authorities; and, that with the last exception, the rules of Reg. XI. 1806 stand as they were. C. O. No. 234 of vol. 1. Const. No. 314.

Explanation of the above rule.

1829. The officers of government cannot seize carriage for the transport of rum, or other supplies required for military purposes, unless the supplies are proceeding with a body of troops, and are required for their use on the line of march: nor can they impress men for the department of public works. Const. No. 1049. C. O. No. 214 of vol. 2.

Carriage cannot be seized for the conveyance of military stores not with troops.

1830. Sections 2, 3, and 8, Reg. XI. 1806, apply to troops and travellers commencing their march, as well as to those actually *en route*. Const. No. 1188.

The above rules apply at the commencement of as well as during the march.

1831. The police must be left to their discretion as to the mode of compelling bearers, &c., to go with troops and travellers, keeping within the law, and leaving parties who consider themselves aggrieved to seek redress in the usual manner, and reporting for the magistrate's orders any instance of refusal of individuals to supply travellers with provisions and other articles at a reasonable rate, or to receive a fair rate of hire for their own services, or those of their carts or bullocks. Const. No. 1188.

Mode of compelling service is left to the discretion of the police officers.

1832. On the formation of large camps, and the aggregation of large bodies of troops, commissariat officers have been in the habit of requiring the intervention of magisterial authority in procuring the attendance of trades people, and artificers of various denominations, to accompany such camps without remuneration, asserting that they must trust to their chance of private employment while with the camp for their recompence. All requisitions of the nature above described are discountenanced by the military board; and the responsibility of withholding compliance from applications for the illegal exercise of their authority devolves upon the magistrates solely and entirely. The practice of pressing trades people and artisans to follow military camps, with or without remuneration, is strictly interdicted; and the magisterial authorities are to be careful to exert their official influence in aid of the commissariat officers only in such mode and measure as is consistent with the requirements and directions of law. C. O. No. 176 of vol. 3.

Trades people and artificers are not to be forced to follow camps whether with or without remuneration.

Sepoys are not to be sent into the villages for the purpose of procuring provisions, &c.

1833. Military officers, or other persons to whom escorts are allowed, when travelling through the country by land or proceeding by water, are forbidden to send sepoys or lascars into the villages, for the purpose of procuring any sort of provisions, or of pressing bearers, coolies, or boatmen. Every local officer of police, upon proper application, is to grant under sect. 8 of this regulation such assistance as he is able to afford; and all violent measures, therefore, are considered equally illegal and unnecessary. Reg. XI. 1806, sect. 9, cl. 7.

Coercion is not to be used in procuring labor and materials for the department of public works.

1834. Executive officers are prohibited (by the circular order of the military board No. 211) from having recourse to coercion, and the intervention of the civil authority, in procuring labor and materials for the use of the department of public works: and all civil authorities are prohibited from assisting to supply the wants and demands of either public or private parties, except in the case of troops marching. C. O. Govt. Bengal, No. 2313, November 25, 1846.

SECTION XIII.

OF PROHIBITED BOATS.

Darogahs are to seize prohibited boats.

Description of prohibited boats.

1835. The darogahs are to seize all boats built, used, or transferred, in opposition to the rules contained in this section, and to apprehend and send to the magistrate the artificers employed in repairing or building such boats, and to report to him the name of the proprietor of the village in which they have been built or repaired. All persons are prohibited building or making use of boats of the following denominations and dimensions, or of boats of any other denominations being of the same dimensions, without previously obtaining from the magistrate the written authority hereafter directed:

	In length covids.	In breadth covids.
Luckhas,.....	40 to 90	2½ to 4
Jelkas,.....	30 to 70	3½ to 5

Paunsways of Chandpore carrying more than thirty oars.

Beng. Reg. XXII. 1793, sect. 20, cl. 1.

Magistrates are to seize and confiscate such boats.

1836. The magistrates are to seize and confiscate all boats of the foregoing descriptions, which are built, used, or transferred within the limits of their respective jurisdictions without written authority from them for that purpose. *Beng.* Reg. XXII. 1793, sect. 20, cl. 2.

Villages in which such boats are built or repaired to be forfeited to government.

1837. Any zumeendar or other landholder allowing any boat of either of the descriptions above specified to be built or repaired within the limits of his zumeendaree, unless a writing is produced to him under the seal and signature of the magistrate, authorizing the building or using of such boats, is to forfeit to government the village in which such boat is proved to have been so built or repaired. *Beng.* Reg. XXII. 1793, sect. 20, cl. 3.

1838. All carpenters, blacksmiths, or other artificers, are prohibited engaging for or being employed in the building or repairing of boats of such descriptions (unless the person offering to employ them produces a writing under the seal and signature of the magistrate authorizing the building or using of such boat) under pain of imprisonment for any period not longer than one month, or suffering corporal punishment not exceeding 20 stripes. The magistrates are empowered to cause artificers, who are proved to have offended against this prohibition, to be punished in the manner and under the limitations directed according to the circumstances of the case. *Beng.* Reg. XXII. 1793, sect. 20, cl. 4.

Punishment of artificers employed in building or repairing such boats.

1839. The magistrates are empowered to authorize any person to build or use boats, of the dimensions or descriptions above prohibited, for the purposes of trade, or of conveying themselves from place to place by water, or for recreation; but such authority is to be given in writing under his official seal and signature, and is constantly to remain with the person to whom the building of the boat is committed whilst the boat is building, or on board of the boat in charge of some person after it is built; otherwise the boat is to be liable to seizure and confiscation notwithstanding such writing, in the same manner as if the boat had been built and used without such authority. The magistrates are to be careful not to grant licenses to build or use boats of the above denominations or dimensions, excepting to persons who they are satisfied will not allow them to be employed for any improper purposes. All persons desirous of building or using boats of the prohibited dimensions and descriptions, or to sell or transfer them, are to apply to the magistrate for a written authority for that purpose. The magistrates are to cause this section to be subjoined to all the written authorities which they grant for the building or using the boats in question, and the sanction for the sale or transfer of such boats is to be endorsed on the original authority for building or using them. *Beng.* Reg. XXII. 1793, sect. 20, cl. 5.

Magistrates may grant licences for building such boats, under certain restrictions; and the section is to be appended to such licenses.

CHAPTER IV.

OF LANDHOLDERS.

SECTION I.

OF THEIR RESPONSIBILITY.

1840. Landholders and farmers of land are not responsible for robberies committed in their respective estates or farms, unless it is proved that they connived at the robbery; received any part of the property stolen or plundered; harboured the offenders; aided, or refused to give effectual assistance to prevent their escape; or omitted to afford every assistance in their power to the officers of government for their apprehension; in either of which cases they are subject to be prosecuted personally for the crime or offence before the sessions court, and if convicted their lands and effects are liable to be sold at the discretion of government to make good the value of the property stolen or plundered to the owner. *Beng.* Reg. XXII 1793, sect. 3.

Lower Provinces.

Landholders are not responsible for robberies except in cases of neglect or connivance.

N. W. Provinces.

Police subject to landholders, who are responsible for the preservation of the peace.

Police duties for which the village zumeendars and farmers in Benares bound themselves to be responsible.

1841. The landholders and village farmers are bound to, and responsible for, the preservation of the peace within the limits of their respective estates and farms. *Ben.* Reg. XVII. 1795, sect. 2. *Ced. Prov.* Reg. XXXV. 1803, sect. 2. *N. W. P.* Reg. XIV. 1807, sect 4.

1842. The engagements entered into by the village zumeendars and farmers [in Benares] bound them to be responsible, subordinately to the aumil(a), for the maintenance of the peace, and for apprehending all disturbers thereof in and throughout their respective estates and farms; not to harbour thieves or robbers, but to secure their persons and deliver them up for trial; as well as to recover, or in failure thereof to be answerable for and to make good the value of, all property robbed or stolen within their respective limits:—and to send in for trial, accompanied by an attested report of the circumstances of the case, all parties concerned in broils, affrays, murders, or other breaches of the peace. *Ben.* Reg. II. 1795, sect. 14, cl. 8 and 9.

How far landholders are responsible for thefts and robberies,

1843. Landholders and farmers of land are considered responsible for robberies or thefts committed in their respective limits, estates, or farms; it being understood(b) however that for night robberies in the open roads or woods, the landholders, or farmers are not to be held responsible, unless it is proved that they had such knowledge of the circumstances, as might reasonably have been expected to enable them to have prevented the theft or robbery; but that for thefts or robberies in inhabited places they are to be considered as liable to be made responsible, whether notice of the arrival of the owners of the property has been given to them or not, if under the circumstances of the case the magistrate is of opinion, that the theft or robbery was committed with their connivance, or that the perpetration of it was ascribable to their want of care or vigilance. *Ben.* Reg. XVII. 1795, sect. 3. *Ced. Prov.* Reg. XXXV. 1803, sect. 3, cl. 1. These rules are declared to be still in force throughout *Ben.* and *Ced.* and *Conq. Prov.* by Reg. XIV. 1807, sect. 19, cl. 1.

(a) The tehsildaree (or aumildaree) system of police established by the above and other regulations in Benares, and the ceded and conquered provinces, was declared to have been found inefficient for the purposes intended by it, and consequently repealed by Reg. XIV. 1807; and all mention of the tehsildars, their duties and responsibilities, has accordingly been struck out of the provisions quoted in succeeding paragraphs.

(b) The preamble to Reg. XVII. 1795, thus explains the causes of this provision :—"But the parties, thus made responsible, having represented that robberies and thefts committed on byoparies and others were often perpetrated in consequence of their stopping and remaining during the night, with their cattle and goods, in the open fields or woods, instead of putting up in the villages, and giving notice of their arrival so as to admit of their security being duly attended to, it was provided by a general notification issued by the resident on the 29th January 1789, that no person should be entitled to restitution or indemnification by the aumils, landholders, or farmers, for losses by theft or robbery committed at night in the open fields or woods, and that restitution or indemnification should be claimable only in cases in which the owners of the property had put up at some town or village, and given notice of their arrival. But it having been subsequently considered, that it was the duty of the aumils, and the landholders and farmers, to have information conveyed to them of the arrival of merchants and travellers within their respective limits, and to provide for their security and protection; and it having appeared improbable that travellers and merchants in general would be apprized of the requisition for their giving notice of their arrival at a town or village; it was deemed inconsistent with the principles of justice, that any omission in this respect on their part should be allowed to exempt the aumils, landholders, or farmers, from making good any losses they might sustain by theft or robbery. It accordingly became an established principle throughout the province, that for night robberies in the open roads or woods the tehsildars, landholders, and farmers, were not to be held responsible, unless," &c. as above.

1844. The landholders and farmers are further responsible for the value of any stolen or plundered property, proved to have been brought into their estates or farms with their knowledge or connivance, and which they have not caused to be delivered up, or have not given timely information respecting it to the local police officer or to the magistrate. *Ben. and Ced. and Conq. Prov.* Reg. XIV. 1807, sect. 19, cl. 2.

and for the value of stolen property brought into their estates.

1845. All claims upon the landholders and farmers for the value of stolen or plundered property, under the above rules, are to be instituted, tried, and decided in the civil courts, subject to the general rules of appeal. *Ben. and Ced. and Conq. Prov.* Reg. VIII. 1797, sect. 2; and Reg. XIV. 1807, sect. 19, cl. 3.

Claims for the value of stolen property to be tried in the civil court.

1846. The landholders and farmers of land, who by the above provisions, are entrusted with the police of their respective estates and farms, are required, with the assistance of their pykes, chokeedars, pasbans, and other descriptions of village watchmen, to give at all times their utmost care and vigilance to prevent affrays, assaults, and all other acts of violence and breaches of the peace, within their respective estates and farms; as well as to apprehend, and deliver over to the police officers, any persons who are found in the act of committing a breach of the peace, or whom the village watchmen are required to apprehend by [sect. 21, Reg. XX. 1817]. *Ben.* Reg. II. 1797, sect. 2. *Ced. Prov.* Reg. XXXV. 1803, sect 3, cl. 2.

Landholders required to prevent affrays, and other breaches of the peace, and to apprehend persons committing such.

1847. Any landholder or farmer of land, who is convicted of wilful neglect in the instances above referred to, and particularly of neglect to afford his ready and utmost assistance in apprehending persons within his estate or farm who have committed, or are charged with having committed a breach of the peace, is liable to the forfeiture of his estate or farm, or to such fine to government as is judged adequate to the circumstances of the case; and is to be proceeded against in the following manner. *Ben.* Reg. II. 1797, sect. 3, cl. 1. *Ced. Prov.* Reg. XXXV. 1803, sect. 3, cl. 3.

Landholders guilty of wilful neglect in such cases are liable to forfeiture of land, or fine.

1848. Landholders are liable to fine by the magistrate, in cases of theft of property at night from within their villages, only when they wilfully neglect to apprehend and deliver over to the police officers any person whom the village watchmen are required to apprehend by [sect. 21, Reg. XX. 1817], or when they make any other default of the nature described in the above provision. Const. No. 422.

When landholders are liable to fine for theft of property at night.

1849. The charge of wilful neglect, in the instances aforesaid, is to be received and examined into by the magistrate in the mode prescribed by the regulations with respect to other charges of a criminal nature; and after hearing the defence of the party accused, with the evidence adduced against him in his behalf, if the magistrate is of opinion that the charge is not established, he is to pass judgment of acquittal, with damages(a) to the party if the complaint appears to have been groundless and litigious. If the magistrate considers the charge established, he is to record his opinion to this effect, with the punishment he judges adequate to the case, whether a fine (the amount of which is to be specified), or a forfeiture of the offender's estate or farm (the annual jumma of which is to be

How the magistrate is to proceed in such cases.

(a) These damages must mean reimbursement of costs, under the provisions of Reg. XIV. 1797, and Reg. VII. 1803. *See paras.* 1066 *et seq.*

in that case specified), and to transmit without delay a copy of his proceedings to the nizamut adawlut. *Ben.* Reg. II. 1797, sect. 3, cl. 2. *Ced. Prov.* Reg. XXXV. 1803, sect. 3, cl. 4.

Private prosecution is not necessary in such cases.

1850. These provisions may be applied to a case in which no charge has been preferred by a private prosecutor; the magistrate being competent to proceed against the zumeendar for such neglect, whatever may be the means by which he has acquired the information to criminate him. Const. No. 889.

How the nizamut adawlut are to proceed on receipt of the magistrate's proceedings in such cases.

1851. The nizamut adawlut, on receipt of the magistrate's proceedings, are to pass such order thereupon as they think proper, on due consideration of the evidence and all the circumstances of the case; and in all instances wherein they order a fine to government their judgment is to be considered final, and immediately carried into execution by the magistrate, in the same manner as other fines are levied under the existing regulations. But in case the nizamut adawlut adjudges a forfeiture of the offender's land or lease, they are, previous to ordering such judgment to be carried into execution, to transmit their proceedings with those of the magistrate to government, who are finally to determine whether the judgment of forfeiture is to be put in force, or commuted to a fine, or otherwise; and who, whenever the land or lease of the offender is ordered to be forfeited to government, are at the same time to cause the necessary instructions for the future disposal of the land to be conveyed to the collector through the board of revenue. *Ben.* Reg. II. 1797, sect. 3, cl. 3. *Ced. Prov* Reg. XXXV. 1803, sect. 3, cl. 5.

The same rules are applicable to landholders conniving at, or aiding and abetting in any theft or robbery.

1852. The above provisions extend to landholders or farmers of land, who are convicted of having themselves been concerned, directly or indirectly, in any theft or robbery committed within their respective estates or farms, or of having been aiding and abetting therein, or privy to the same. Such landholders and farmers are liable to be proceeded against in the manner prescribed in the foregoing clauses, subject to the penalty prescribed therein. *Ced. and Conq. Prov.* Reg. VIII. 1805, sect. 14, cl. 8.

The same rules are applicable to officers of government employed in the collection of the public revenue.

1853. The above provisions, extended to the conquered provinces and Bundlecund by Reg. IX. 1804, are declared to be still in force, and are also to be considered equally applicable to all officers of government, entrusted with or employed in the collection of the public revenue; or the rents of estates held khas, or under attachments; it being the duty of every public officer to render any assistance in his power for the support of the police, and the prevention of crimes, or the apprehension of persons by whom they are committed; especially when called upon to aid the established officers of police. *Ben. and Ced. and Conq. Prov.* Reg. XIV. 1807, sects. 20 and 21.

SECTION II.

OF INFORMATION REQUIRED FROM LANDHOLDERS AND OTHER PERSONS; AND OF CONNIVANCE IN OFFENCES.

Information to be given regarding the resort to their estates of dacoits and other robbers,

1854. All zumeendars, talookdars, and other proprietors of land, whether malgoozaree or lakhiraj; all sudder farmers and under renters of land of every description; all dependant talookdars; all naibs and other local agents; all native officers employed in the collection of the revenues and rents of lands on the part of government, or of the court of wards; are especially accountable for the early and punctual communication to the magistrates and police darogahs, either publicly or secretly, as the informants judge proper, of all intelligence which they obtain respecting the resort to any place, within the limits of the estate or farm held or managed by them, of any person or persons of the different classes of people ordinarily known by the appellation of dacoits, kozaks, thugs, or budhucks, or of any other description of robbers. Reg. VI. 1810, sect. 2.

and penalty for neglect in such cases, with mode of procedure to be adopted by magistrate:

1855. If a magistrate has grounds to believe, that any person of the descriptions above specified has neglected to give due information to the magistrate, or the police darogah, of the resort of any robber to any place within the limits of the estate or farm held or managed by such person, the magistrate is to call upon him to answer to the charge; and if it appears, upon a full and impartial inquiry, that the person accused has been actually guilty of the neglect ascribed to him, the magistrate is to sentence the offender to pay such a fine to government, and to suffer imprisonment for such a period of time, as he deems proportioned to the offence, not exceeding however the limitation prescribed by sect. 19, Reg. IX. 1807, viz. imprisonment for 6 months, and a fine of 200 rupees, commutable if not paid to imprisonment for a further period not exceeding 6 months longer. Reg. VI. 1810, sect. 3.

of the residence of any receiver or vender of stolen property within their estates,

1856. All zumeendars, talookdars, and other proprietors of lands, whether malgoozaree or lakhiraj; all sudder farmers and under renters of land of every description; all dependant talookdars; all naibs and other local agents; all native officers employed in the collection of the revenue and rents of land on the part of government, or of the court of wards; are hereby declared accountable for the early communication to the magistrate, either secretly or publicly, of all information which they obtain respecting the residence of any notorious receiver or vendor of stolen property within the limits of the estate or farm held or managed by them; and any landholder or other description of persons above noticed, to whom such responsibility is declared to attach, who neglects to give the information hereby required to the police darogah, or to the magistrate, is on proof of such neglect, after a similar inquiry to that directed by the above provision,[a] to be sentenced by the magistrate to pay a fine, or to suffer imprisonment not exceeding the limitation therein specified. *Beng.* Reg. I. 1811, sect. 10; extended to *Ced.* and *Conq. Prov.* and to *Ben.* by sect. 2, Reg. XV. 1812.

and penalty of neglect:

(a) The section specified in the original is sect. 13, Reg. IX. 1808; but, as that regulation has been repealed, and as it is exactly the same, in such respects, as sect. 3, Reg. VI. 1810, I have quoted the latter for the sake of convenience.

of the commission of robberies perpetrated within their estates,

1857. All zumeendars, talookdars, and other proprietors of lands, whether malgoozaree or lakhiraj; all sudder farmers and under renters of land of every description; all dependant talookdars; all naibs and other local agents; all native officers employed in the collection of the revenue and rents of lands on the part of government, or of the court of wards; are declared especially accountable for the early and punctual communication to the magistrates or police darogahs, of all information which they obtain respecting the commission of robberies, and likewise regarding the offence of breaking into houses, tents, or boats, or other place of habitation, perpetrated within the limits of the estate or farm held or managed by them; and any landholder or other description of persons above noticed, to whom such responsibility is declared to attach, who neglects to give the information hereby required to the police darogah or to the magistrate, is on proof of such neglect, after an enquiry similar to that directed by sect. 3, Reg. VI. 1810,* to be sentenced by the magistrate to pay a fine, or to suffer imprisonment not exceeding the limitation therein specified. Reg. III. 1812, sect. 4, cl. 2.

and penalty of neglect:

* *see note to para.* 1856.

of the commission of murders, arson, and thefts, perpetrated within their estates,

1858. All zumeendars, talookdars, and other proprietors of land whether malgoozaree or lakhiraj; all sudder farmers and under renters of land of every description, all dependant talookdars, all naibs, and other local agents; all native officers employed in the collection of the revenue and rents of lands on the part of government, or of the court of wards; are declared especially accountable for the early and punctual communication to the magistrates, or police darogahs, of all information which they obtain respecting the commission of murders, and likewise regarding the offences of arson and theft, perpetrated within the limits of the estate or farm held or managed by them; and any landholder or other description of persons above noticed, to whom such responsibility is declared to attach, who neglects to give the information hereby required to the police darogah or to the magistrate, is on proof of such neglect, after an enquiry similar to that directed by sect. 3, Reg. VI. 1810* to be sentenced by the magistrate to pay a fine, or to suffer imprisonment not exceeding the limitation therein specified. Reg. VIII. 1814, sect. 2.

and penalty of neglect.

* *see note to para.* 1856.

1859. A magistrate cannot sentence a person under the above provision to both fine and imprisonment, but only to a fine not exceeding 200 rupees, commutable if not paid to imprisonment not exceeding 6 months. Const. No. 485.

The principal persons in the villages are required to give information of the resort or passage of any considerable body of strangers;

1860. The principal persons residing in villages, whether landholders or farmers, or other local managers, or munduls, putwarees, or other heads of villages, and also chokeedars and village guards of every description, are responsible for the early and punctual communication to the officers of the nearest police station of the resort to or passage through their villages of any considerable body of strangers, or of the assemblage of such bodies within the limits of their villages, together with any particulars which they are able to collect as to the alleged object of their assemblage or journey, or any suspicion which arises as to their real character and intentions. Any landholder or farmer or other local manager, or mundul, putwaree, or other heads of villages, who wilfully neglects or delays to give the information above required, is on proof of such neglect, after an enquiry similar to that directed by sect. 3, Reg. VI. 1810,* to be sentenced to pay a fine or to suffer imprisonment not exceeding the limitation therein specified; and any chokeedar, or other

penalty in cases of neglect:

* *see note to para.* 1856.

village guard, who is guilty of such neglect, is liable to the punishment which the magistrate is authorized to inflict under the provisions of sect. 6, Reg. III. 1812. [*See note to para.* 1640.] Reg. III. 1821, sect. 7, cl. 5.

and of all unnatural or suspicious deaths;

1861. The principal persons residing in villages, whether landholders or farmers or other local managers, or munduls, putwarees, or other heads of villages, are responsible for the early and punctual communication to the officers of the nearest police station of all unnatural deaths, or deaths attended with suspicious circumstances, which come to their knowledge: and any landholder, farmer, manager, or other principal inhabitant of a village, who is convicted of wilfully neglecting or delaying to furnish the information above required, is liable to be fined by the magistrate in any sum not exceeding 200 rupees, and in default of payment to be confined for any period of imprisonment not exceeding 6 months. Reg. XX. 1817, sect. 14, cl. 1.

penalty for neglect.

It is not sufficient that the information is received from the chokeedars.

1862. The zumeendars are obliged to give, under certain prescribed penalties, the required information respecting dacoities, murders, and other crimes committed within the limits of their estates, which come to their knowledge; and it is not sufficient that the same information is received from the chokeedars. The mode in which the information is to be communicated appears to be left to the discretion of the zumeendars: in general it should be supplied in writing; but if the zumeendar has any secret information to give, he may wait on the magistrate personally for that purpose; and it is optional with him to send a servant to the magistrate or to the darogah, as he sees fit. Const. No. 1281.

No private engagement can absolve a landholder from the performance of such acts as by law he is bound to perform.

1863. In reply to a question as to whether, in the case of a zumeendar leasing his lands to British-born subjects, such unauthorized substitution by the landholder of a deputy who is not amenable to particular laws, can be held to relieve the landholder from the responsibility which those laws impose upon him,—the nizamut adawlut decided that no private engagement between a landholder and another person can release the former from the due performance of such acts as he is bound by the regulations of government to perform.(a) Const. No. 1298.

Guardians of minors, not under the court of wards, are responsible;

1864. In the case of a minor, whose estate is not under the court of wards, the executor or guardian must, during the minority, stand in the place of the minor, and be subject to all the rules of suit and defence to which the minor himself would be subject were be not a minor. Const. No. 335.

and the same rules are to be observed in the government khass muhals.

1865. The magistrate is to take particular care to see, that in the government khass muhals the same police rules are obeyed by the tehsildars and village officers, as are in force according to the law in private zumeendaries. In case of this not being done, he is immediately to report the instances of neglect to the superintendent of police, that measures

(a) "The zumeendars also nominate village gomashtahs to give information of crimes to the magistrate; and it seems to have been the practice to consider the landholders relieved from responsibility by such nominations, and to punish the gomashtah for breach of the police regulations on the hushing up of heinous offences. I have nothing to do with the means through which the landholders give information to the magistrate, but I have directed the magistrate to hold them or their local managers responsible for the performance of the duties imposed on them by law, from which they cannot exempt themselves by the nomination of an underpaid hireling." *Remarks of superintendent of police in police report for* 1844, *para.* 403.

may be taken to have the same remedied; but the transmission of such report is not to cause the magistrate to postpone the issue of any orders, which he is authorized by law to pass. C. O. Sup. Pol. L. P. No. 4 of 1840.

Penalties to which landholders are liable for harbouring dacoits or other robbers; and mode of procedure in such cases.

1866. If the magistrate has grounds to suspect that any zumeendar, talookdar, or other proprietor of land, whether malgoozaree or lakhiraj; any sudder farmer or under renter of land of any description; any dependant talookdar; any naib or other local agent; or any native officer employed in the collection of the revenues or rents of land on the part of government, or of the court of wards; has afforded any actual assistance in harbouring a dacoit, kózak, thug, budhuck, or other robber, that is if such person is suspected of having afforded to the said offender lodging, money, grain, or other supplies, or that he has committed any other overt act, tending to aid the offender in his depredations upon the community, or to evade the pursuit of justice; or that he has received any present or nuzzur, either in money or goods, from the said offender; the magistrate is to call upon the person suspected of having so offended for his reply; and if it appears upon a full and impartial inquiry, that he has been actually guilty of the serious offence ascribed to him, the magistrate, in addition to the punishment mentioned in the preceding section [*i. e.* imprisonment for 6 months, and a fine of 200 rupees, commutable if not paid to imprisonment for a further period not exceeding 6 months longer], is to adjudge the estate or farm held by him (supposing him to be a sudder zumeendar, talookdar, or farmer) forfeited to government. Provided however that, previously to carrying the judgment of forfeiture into execution, the magistrate is to submit his proceedings on the subject to the nizamut adawlut, who are to confirm or annul the judgment so passed, according as they are of opinion that the charge has been duly established or otherwise. Provided moreover that, in the event of their confirming the judgment, the nizamut adawlut are to report the case to government. Reg. VI. 1810, sect. 4.

Proprietors of lakhiraj lands and durputnee talookdars do not come within the above description of persons.

1867. Proprietors of lakhiraj lands and durputnee talookdars are exempt from the penalties prescribed by the above section, the provisions of which apply exclusively to a sudder zumeendar, talookdar, or farmer. They are liable to punishment under the succeeding section. Const. No. 63.

Penalties to which other persons, not landholders, are liable for such offence;

1868. Should the person convicted of the offence mentioned in the preceding section not be a proprietor or sudder farmer of land, the magistrate is to sentence him, in addition to the fine and imprisonment noticed therein, to such further fine and imprisonment as he deems proportioned to his offence; but previously to carrying such further judgment into effect, the magistrate is to submit his proceedings to the nizamut adawlut, who are finally to confirm, amend, or rescind the decision, as appears to them to be just and proper.

and if offender is an officer of government.

Should the servant so offending be also an officer of government, the nizamut adawlut is at the same time to order him to be dismissed from his office, and is further to report to government, whether it appears expedient that the offender should be declared incapable of again serving government in any public capacity. Reg. VI. 1810, sect. 5.

Example of punishment of landholder conniving at affray.

1869. A landed proprietor was convicted of having had previous knowledge of, and conniving at, an affray attended with wounding; and was sentenced to a fine of 500 rupees, or in default imprisonment without labor for 3 years. N. A. R. vol. 5, page 41.

SECTION III.

OF THEIR DUTIES IN THE APPREHENSION OF ABSCONDED OFFENDERS.

Registers of escaped convicts and persons absconded to be kept up by the magistrate;

1870. The magistrates are to keep up and regularly revise, according to the forms given in Nos. 1 and 3 (Nos. 1 and 2 of appendix B), a register of convicts who have broken jail, or have otherwise effected their escape, and a register of persons charged with or suspected of the commission of specific crimes of a heinous nature, who have eluded the pursuit of justice: copies of these registers are to be forwarded half-yearly[a] to the superintendent of police. Reg. III. 1812, sect. 9, cl. 1 and 2.

and lists to be prepared therefrom half-yearly, or oftener, and transmitted to the landholders with warrants for the apprehension of the persons named therein.

copies to be sent also to the police darogahs.

1871. At the expiration of every six months, or oftener, when circumstances appear to require it, the magistrates are to cause lists to be prepared from these registers of all persons therein named, who have not been apprehended; and are to transmit copies of such lists to the principal landholders, farmers, and managers of land, together with warrants for the apprehension of the persons therein named, agreeably to the forms Nos. 4 and 6 (Nos. 8 and 9 of appendix A). Transcripts of the lists thus prepared are to be at the same time transmitted by the magistrates under their official seal and signature to the police darogahs for their information. Reg. III. 1812, sect. 9, cl. 3.

and written acknowledgment of their receipt required from the landholders.

1872. The magistrates are to be careful to obtain from the landholders, farmers, and managers of land, or from their representatives, to whom such lists and warrants are delivered, written acknowledgments of the receipt of them. Reg. III. 1812, sect. 9, cl. 4.

Landholders, &c. to whom such lists and warrants are sent, may apprehend the persons named therein.

1873. All zumeendars, talookdars, and other proprietors of land, whether malgoozaree or lakhiraj; all sudder farmers and under-renters of land of every description; all dependant talookdars; all naibs and other local agents; all native officers employed in the collection of the revenues and rents of land on the part of government, or of the court of wards; to whom the lists and warrants have been delivered, are authorized either to cause the immediate apprehension of any of the persons named in either of the lists, who are found within the limits of the estates held or managed by them; or to apply to the nearest police officer for any aid which may be required in the execution of that duty; or simply to communicate to such officer such information as has been obtained respecting the place, to which the persons in question resort, or in which they are concealed. Reg. III. 1812, sect. 9, cl. 5.

But landholders cannot be called upon to give certificates that absconded offenders are not within the limits of their estates.

1874. It was held that a requisition by a magistrate from the zumeendars of villages, within a certain distance from that where an affray attended with homicide occurred, of certificates that the absconded offenders implicated in the affray were not within the limits of their estates, was not warranted by the above provisions. Const. No. 1352.

(a) It would appear from C. O. Sup. Pol. L. P. No. 6 of 1845, that he requires these only annually.

Such persons when apprehended are to be delivered into the charge of the nearest police officer.

1875. Persons who are apprehended under the provisions of this regulation are to be delivered as speedily as possible into the charge of the nearest police officer for the purpose of being forwarded under safe custody to the magistrate; and an acknowledgment is uniformly to be given by such police officer, specifying the names of the prisoners, and the date on which they were delivered into his charge. Reg. III. 1812, sect. 9, cl. 6.

Zumeendars, &c. are to furnish half yearly reports of the persons so apprehended.

1876. The several zumeendars, farmers, and local agents, to whom warrants and lists of public offenders have been furnished under these provisions, are required to transmit to the magistrates, on the 30th June and 31st December in each succeeding year, returns according to the form No. 7 (No. 16 of appendix C) of all offenders who have been apprehended by them, or by means of information given by them to any police officer during the preceding six months; counterparts of which returns are at the same time to be transmitted by the several zumeendars, farmers, or local agents, by means of the public dawks, to the office of the superintendent of police. Reg. III. 1812, sect. 9, cl. 7.

So, darogahs are to furnish half-yearly reports of such persons apprehended by them.

1877. In like manner the darogahs are to transmit, at the same periods, returns of all persons named in the lists with which they have been furnished, who have been apprehended by them during the preceding six months, accompanied by any explanation which they wish to offer in the event of no persons having been apprehended; copies of the prescribed returns and explanations are at the same time to be forwarded by the police darogahs by the public dawk to the superintendent of police, and such returns are to be invariably made, whether any persons have been apprehended or otherwise, and are to be despatched on or before the 15th of January and July. Reg. III. 1812, sect. 9, cl. 8.

Magistrates to explain to zumeendars, &c. that they will be held guiltless of any consequences ensuing from resistance to the execution of such warrants.

1878. Magistrates are to cause it to be explained to all persons to whom warrants are granted for the apprehension of persons under the above provisions, that if in the legal execution of such warrants, either by themselves or by any person or persons acting under their authority, any resistance is made by the party named in the warrant, or by any other person (the said warrant being shown to the party so resisting) such zumeendar, farmer, or local agent, or other person acting under their authority, by whom the warrant is executed, is to be held guiltless with regard to any consequences, which ensue from such resistance to the execution thereof. Reg. III. 1812, sect. 10, cl. 1.

Resistance to such process how to be punished.

1879. Any resistance by any person whatever of any warrant or process of the court issued under this regulation, is to be punishable in the same manner, as is prescribed by the existing regulations for resistance of process of the magistrates. Reg. III. 1812, sect. 10, cl. 2.

Zumeendars, &c. to be informed that they will not be required to prosecute or attend the courts in such cases.

1880. The magistrates are to cause it to be carefully explained to the zumeendars, farmers, and their local agents, to whom warrants are granted under this regulation, that they will not be required either to become prosecutors, or to attend the court, or to adduce evidence, or otherwise be subjected to any personal inconvenience or expense on account of any charge or prosecution, which is depending or is instituted against any person legally apprehended by them under this regulation, or who are apprehended by means of any information which they furnish to any police officers. Reg. III. 1812, sect. 11, cl. 1.

1881. In the event of any evidence being required by the magistrate in regard to the general character of any party apprehended by means of any zumeendar, farmer, or local agent, or in respect to any other point or matter which is not furnished by the proceedings previously held by the court, or by any other records of the magistrate's office, the magistrate is to cause such evidence to be procured by means of the regular police officers. Reg. III. 1812, sect. 11, cl. 2.

Evidence as to persons so apprehended is to be procured through the regular police officers.

1882. Whenever a magistrate has grounds to believe that any zumeendar, farmer, or manager of land, has been guilty of any neglect or misconduct in the discharge of the duty imposed on him by the above provisions, he is to call upon him to answer to the charge; and if it appears upon a full and impartial inquiry, that the accused has been actually guilty of such neglect or misconduct, the magistrate is to sentence him to pay such a fine to government and to suffer imprisonment for such a period as he deems proportioned to the offence, not exceeding the limitation prescribed by sect. 19, Reg. IX. 1807, viz. imprisonment for six months, and a fine of 200 rupees, commutable, if not paid, to imprisonment for a further period not exceeding six months longer. Reg. III. 1812, sect. 12.

Penalties for neglect or misconduct of zumeendars, &c. in the performance of the duty herein prescribed.

1883. The magistrates are empowered to grant such lists and warrants as are described above to any individual with his consent not being a zumeendar, farmer, or local agent for the management of lands, or regular police officer of government; and the provisions of this regulation are to be held applicable to the legal execution of any warrant of the magistrate by any person so employed. Reg. III. 1812, sect. 13.

Magistrates may grant such lists and warrants to persons not being zumeendars, &c. with their own consent; and these rules are applicable to such persons.

1884. If any zumeendar, farmer, local manager, or other person to whom a magistrate has issued a warrant or order, in pursuance of the above rules, or of any other regulation in force, for the apprehension of a person or persons proclaimed or charged with or suspected of a crime, applies to an officer of police for co-operation and support in the execution of such warrant or order; the police officer, to whom the application is made, is to afford every assistance in his power for the due enforcement of the process; and, if required to do so, is to receive charge of the prisoner from the zumeendar, farmer, local agent, or other person, and is to grant a written acknowledgment specifying the name of the prisoner and the date on which he was delivered into his charge; he is also without delay to forward the prisoner under safe custody to the magistrate. If the person named in the application made to the police officer is not apprehended, the particulars of the application and of the measures taken in consequence are to be recorded for the information of the magistrate in the thana diary. Reg. XX. 1817, sect. 26, cl. 13.

Police officers are to assist the zumeendars, &c. in carrying the above rules into effect.

SECTION IV.

OF TREATMENT OF LANDHOLDERS BY MAGISTRATES; AND MISCELLANEOUS RULES.

Importance of acquiring the assistance of landholders.

1885. It is of the greatest importance that the magistrate should acquire the assistance of the European and native landholders (and indeed of the people generally) in the district in the detection and suppression of crimes; and he should make the obtaining of this one of the principal objects of his attention. C. O. Sup. Pol. L. P. No. 13 of 1846.

Mode in which a magistrate succeeded in gaining their co-operation.

1886. A magistrate succeeded in obtaining the co-operation of the zumeendars, and almost every description of people, to an extraordinary degree, by assembling and explaining to the naibs and agents of the landholders the purport and intention of the regulations, the assistance and co-operation expected from them, and the consequences of any omission or neglect on their part either to assist the police officers, or to deliver up notorious dacoits, vagrants, or persons of bad or suspicious character supposed to subsist by depredations on the public. C. O. No. 53 of vol. 1.

Mochulkas not to be taken from them with such object.

1887. In pursuing the system pointed out in the above order, the magistrate is not to take mochulkas from the zumeendars, or munduls, or ryots; it is sufficient that the regulations prescribe the duties to be performed by such people, and the adequate penalties for neglect. It is not the policy of government to invest the zumeendars with power to apprehend persons on the ground of their being known robbers or vagrants; but to restrict their agency to the communication to the magistrate and police officers of early information respecting the commission of public offences, and at the same time to withhold from them all positive power of interference in matters of that nature, in which experience has shown that they could not safely be trusted. It is of course to be understood that the zumeendars, like any other individuals, are competent to apprehend persons in the actual commission of public crimes. C. O. No. 80 of vol. 1.

Any individuals may apprehend persons in the actual commission of crimes.

Mode in which zumeendars should be treated by the magistrates.

1888. Much of the reluctance felt by proprietors and managers of estates to give their ready and active assistance in matters of police, is not unfrequently to be ascribed to an injudicious and intemperate use of the authority vested in the magistrates to enforce certain police duties from the zumeendars. The discharge of those duties by the proprietors and managers of estates, or their agents, is undoubtedly essential to an efficient police; but a harassing, vexatious, and indiscriminate interposition of the magistrate's authority, in cases of trifling importance, is not calculated to secure their useful co-operation. If the proprietors of estates are compelled to attend at the magistrate's cutchery, to answer for every petty inattention or supposed irregularity in the discharge of the duties entrusted to them, they will naturally be led to avoid residing on their estates, and to thwart rather than forward the views of the magistrates. The powers vested in the magistrates are abundantly sufficient to enable then to visit with severity any frequent disregard or violent breach of the police duties intrusted to zumeendars; but their willing, and cordial, and really

useful aid, is to be obtained only by a temperate and conciliatory, though firm exercise of those powers; by a liberal consideration of trivial errors and defects; by an uniform acknowledgment of useful services, and by the willing distribution of praise and reward when merited. C. O. No. 241 of vol. 1.

Rules for the procedure of magistrate on receiving report of a zumeendar's neglect of police duties.

1889. On receiving a report of alleged neglect of police duties on the part of any landholder, the magistrate is not to require his personal attendance at the court, before calling upon him to furnish, within a week or ten days, a written explanation of the charge brought against him. Should the explanation be unsatisfactory, or should none be afforded within the time, the magistrate is to require him to appear on an appointed day, in person or by mokhtar, to answer the charge. On his obeying the summons he is to be careful to enter immediately upon the enquiry, avoiding all delay by summoning the witnesses in support of the charge to appear on the appointed day, and by directing the accused to produce at the same time any witnesses whose evidence he may desire to offer in his own defence. The offence being one of a bailable nature, the accused or his agent should not be placed in custody, when required to attend the investigation into the charges. C. O. No. 52 of vol. 3.

Example of the injudicious summoning of a zumeendar to give evidence.

1890. A zumeendar having exerted himself in securing the parties suspected of a murder, and in sending information to the police, the court considered the magistrate to have acted injudiciously in compelling his attendance as a witness, since his evidence under the circumstances of the case was superfluous. "Magistrates," observed one of the judges, "often complain, and with justice, of the want of a disposition in the zumeendars to second their exertions; but nothing is so likely to slacken the zeal of that class of men, as the apprehension that they may have to give evidence as a necessary consequence of any successful effort on their part in aid of the police." N. A. R. vol. 5, page 9.

Landholders are not to pay peons' tullubana when addressed on police matters.

1891. Peons entrusted with perwanahs addressed to landholders or their officers, for assistance to be rendered to the police on emergencies, or for other purposes, are not to exact tullubana from the parties. C. O. No. 33 of vol. 3.

Zumeendars, &c. are prohibited from taking cognizance of, or interfering in matters coming within the jurisdiction of the courts.

1892. Zumeendars, independent talookdars, and other actual proprietors of land, dependant talookdars, farmers of land holding farms immediately of government, and all persons farming lands of the above mentioned descriptions of landholders and farmers of land, and their respective officers, agents, servants, dependants, and ryots, are prohibited from taking cognizance of, or interfering in matters or causes coming within the jurisdiction of the courts of civil judicature, or the sessions courts, or the magistrates, under pain of being liable to the payment of such fine to government, and damages to the party injured, as the court of judicature in which they are prosecuted for the act deems it proper to impose and award. *Beng.* Reg. VIII. 1793, sect. 66.

Landholders are prohibited from confining or inflicting corporal punishment on any under-tenants.

1893. Landholders and farmers of land are prohibited confining or inflicting corporal punishment on any under-farmer, ryot, or dependant talookdar, or putteedar, or their sureties, to enforce payment of arrears of rent or revenue. If any landholder or farmer offends against this prohibition, the person so punished or confined is at liberty either to prosecute the offender for assault or imprisonment in the criminal court, or to institute a suit against him in the civil court. *Beng.* Reg. XVII. 1793, sect. 28. *Ben.* Reg. XLV. 1795, sect. 26. *Ced. Prov.* Reg. XXVIII. 1803, sect. 26.

Landholders, &c. are prohibited from using stocks.

1894. Landholders, farmers, and other local agents, and indigo planters, and other persons, are prohibited from using stocks, or any other instrument of restraint, for the purpose of confining ryots, or other individuals indebted to them on any account whatever; and the darogahs of police are to report to the magistrates, for such orders and process as appears proper under the general regulations, all instances which come to their knowledge of a violation of this rule. Reg. XX. 1817, sect. 27, cl. 6.

Landholders may compel the attendance of any ryot,

1895. Landholders have the power of summoning, and if necessary of compelling, the attendance of their tenants for the adjustment of their rents, or for any other just purpose, or of measuring any land within their respective estates which are liable to measurement under the conditions upon which such land has been leased or held. For the just exercise of such rights and powers, the landholders are not required to make any previous application to the courts of justice; and any person opposing them therein is liable, on proof in the dewanny adawlut, to full damages and all costs, besides being subject, for any breach of the peace, to prosecution and punishment in the criminal courts. But the landholders, their agents and representatives, are answerable for any abuse or unjust exercise of these powers; and, on proof thereof by the party aggrieved in the dewanny adawlut, are liable to full costs and damages, besides a fine to government if the case appears to deserve it. *Beng.* Reg. VII. 1799, sect. 15, cl. 8. *Ben.* Reg. V. 1800, sect. 14, cl. 8. *Ced. Prov.* Reg. XXVIII. 1803, sect. 32, cl. 8.

but are answerable for the abuse or unjust exercise of this power.

Explanation of the above rule; and how far the magistrate may interfere.

1896. The sudder court expressed their inability to define exactly and generally what degree of power it was intended by the use of the term "compulsion" in the above provisions to confer on the landholders in enforcing the attendance of their tenants. The magistrate was directed, in the event of a complaint being preferred to him of the abuse of that power, to decide from the evidence whether any unnecessary and unauthorized degree of severity had been exercised or not. Const. No. 382.

Landholders cannot be compelled to repair roads;

1897. There is no regulation which authorizes a magistrate to compel a zumeendar or other landholder to repair the public roads passing through his village or estate. Const. No. 1072.

or to provide police-buildings;

1898. A magistrate is not authorized to call upon a zumeendar to provide a building for the residence of such police officers as are stationed upon his estate under sect. 8, Reg. XVII. 1816 [*i. e.* outposts.] Const. No. 1247.

or be prohibited from establishing haats in their estates;

1899. Zumeendars and other proprietors of land have a right to establish haats or fairs on their own lands, and to hold them on any day that they think proper; and it is not competent to the magistrates to prohibit the establishment of a haat or fair, or to fix the day on which it may be held, on the plea of its interfering with the right of a neighbouring haat-holder, or on any other ground. C. O. No. 66 of vol. 2.

(magistrates are to interfere in such cases only to prevent a breach of the peace;)

1900. The above order refers only to new disputes regarding haats, with which the magistrate should not interfere unless it is necessary to prevent a breach of the peace; but it has been twice held that summary orders, fixing the days on which a haat was to be held, passed before the promulgation of the above circular order, were to be considered in full force until set aside by a regular civil suit. Const. Nos. 639, and 937.

1901. Zumeendars cannot be prohibited from levying "choongee,"(a) a cess sanctioned by established custom, within the precincts of their estates. Const. No. 973.

or from levying choongee.

CHAPTER V.

OF NATIVE MINISTERIAL OFFICERS.

SECTION I.

OF APPOINTMENT, REMOVAL, AND FUNCTIONS.

1902. The nizamut adawlut, the superintendent of police, and the session judge, may exercise, without reporting their proceedings for the sanction of government, the power of appointing, removing, and accepting the resignation of the principal ministerial native officers acting under them respectively, as well as all other native officers on their respective establishments, excepting the law officers.* Reg. VIII. 1809, sect. 3.

Of superior courts who have the final power of dismissing and appointing their officers.

* *regarding whom, see separate section.*

1903. Whenever the head ministerial native officers of the above mentioned authorities are desirous of resigning their offices, they are required to receive and record such resignations in open court. Reg. V. 1804, sect. 5.

Resignations always to be received in open court.

1904. Whenever the authorities specified above see cause for the removal of any of their head native officers on the ground of misconduct, incapacity, or otherwise, they are to communicate to such officer the grounds upon which they consider him undeserving of continuance in his station, and to call upon him to state what he has to offer in his defence. Reg. V. 1804, sect. 6.

Ground of removal is to be specified in such cases.

1905. The civil and session judge is required to report to the sudder court, for their information, the removal or resignation of the serishtadar, peshkar, or nazir, attached to his court within ten days after the same has taken place. The names of the individuals nominated to such offices are also to be reported to the court in the form No. 24 of appendix C, within the same period after the nomination has occurred. C. O. No. 73 of vol. 3.

The removal or resignation of the head officers of the judge's court to be reported to nizamut adawlut.

1906. Whenever any of the ministerial officers attached to the court of the civil and session judge, receiving a salary of not less than ten rupees a month, is dismissed from the public service for misconduct, a report of the same is to be submitted to the sudder court, according to form No. 25 of appendix C, with a view to a register of their names being kept in conformity to the order of the Court of Directors. An extract from the register is

Session judge to report dismissal of officers in order to the formation of a register.

(a) In Mr. H. M. Elliot's curious and interesting "Supplemental Glossary" this word is explained to be:—"Illegal abstraction of handfuls of market produce. It is frequently, however, given voluntarily as a sort of rent for the use of market conveniences, such as booths, sheds, &c.; and in this sense is equivalent to the *bytuk* of the Deccan and the English *bord half-penny*."

to be forwarded to the judge annually, to enable him to guard against the admission of improper persons into the public offices; and these extracts are to be communicated to the several authorities of the district, so as to make the register of each department available to the heads of the other departments. C. O. Nos. 115 and 125 of vol. 3.

Monthly report of appointments and removals to be furnished to the civil auditor.

1907. The nizamut adawlut, the superintendent of police, and the session judge, are to transmit to the civil auditor a monthly report of any appointments or removals, which are sanctioned under the authority vested in them by the above rules, either of the native officers on their own establishments, or on those of the establishments of the magistrates. Reg. V. 1804, sect. 21. Reg. VIII. 1809, sect 11, cl. 2.

Of magistrate.

Superintendent of police has power to confirm the appointments and removals of all native officers receiving salary of 10 Rs. or upwards.

1908. The superintendents of police are empowered to confirm the appointment, removal, and resignation of the principal ministerial officers of the magistrates, as well as of the record-keepers, and the whole of the native officers on the establishments of the magistrates' and subordinate courts receiving a salary of 10 rupees per mensem or upwards, within their respective divisions, on receiving from the magistrates the reports specified in the following clauses. Reg. VIII. 1809, sect 5, cl. 1; and sect. 7, cl. 1. Reg. I. 1829, sect. 3, cl. 1. Act XXIV. 1837, sect. 4.

All such officers to be nominated by the magistrate; and report to be made to the superintendent of police.

1909. The magistrates are to nominate all such officers, and are in consequence to be held responsible for selecting persons duly qualified. They are to report fully to the superintendent of police any information obtained by them respecting the past employments, character, and qualifications of the persons proposed by them to fill the vacant offices; and it is competent to the superintendent of police to confirm the appointment of the person so nominated, if he sees no objection thereto; or to call for any further information that appears requisite respecting the past employments, character, or qualifications of the person proposed; or, if the appointment of such person appears objectionable, to require the magistrate to nominate another person. No appointment is to be considered final, till so confirmed. But the magistrate is authorized to make temporary appointments of persons duly qualified, in cases of death, removal, suspension, or resignation, immediately reporting the same for the information of the superintendent of police. Reg. VIII. 1809, sect. 5, cl. 2; and sect. 7, cl. 2.

Magistrate may make temporary appointments;

and persons so appointed may legally act before confirmation.

1910. Persons so appointed to officiate can legally act as officers of the court immediately on their nominations, before their appointments have been reported to the commissioner of circuit. Const. No. 618.

The nominating officer is to certify that the person nominated is not his private servant.

* *v. paras.* 1943 *and* 1944.

1911. In all nominations of native officers, the officer making such nomination is required to state explicitly, that the person so nominated is not disqualified under the provisions of this regulation [*i. e.* is not the private servant of such officer]*; and it is at all times the duty of the superintendent of police to see that these provisions are observed; as well as to report any wilful infringement of them to government. Reg. VIII. 1825, sect. 4.

The resignation of such officer is to be received in open court; and transmitted to the superintendent of police.

1912. Whenever any native ministerial officer is desirous of resigning his office, his resignation is to be received and recorded by the magistrate in open court; and is to be transmitted without delay to the superintendent of police with the nomination of a proper person to be his successor, in conformity with the above provisions. Reg. VIII. 1809, sect. 5, cl. 3.; and sect. 7, cl. 2.

1913. When a magistrate sees cause for the removal of any such officer on the ground of misconduct, neglect of duty, experienced incapacity, or other disqualification, he is to report the circumstances of the case, with his opinion on the subject, to the superintendent of police, who is to pass such order as appears proper on the report so made; or to call for further information, or direct any further inquiry which the nature and circumstances of the case require. Reg. VIII. 1809, sect. 5, cl. 4; and sect. 7, cl. 2.

The cause for the removal of any such officer is to be reported to the superintendent of police,

1914. The magistrate is to forward such report for confirmation to the superintendent of police without delay. C. O. Sup. Pol. L. P. No. 1 of 1838.

without delay.

1915. On the dismissal of any ministerial officer, receiving a salary of not less than eight rupees per mensem, the magistrate is to forward a report of the same to the superintendent of police in the form No. 23 of appendix C, that he may prepare a register of the names of such persons, in conformity with the orders of the Court of Directors: an extract from this register is to be forwarded to the magistrate at the close of each year to enable him to guard against the admission of improper persons in the public offices. C. O. Sup. Pol. L. P. No. 10 of 1842.

A special report of dismissed officers is to be made to the superintendent of police for the formation of a register.

1916. In cases of gross misconduct, neglect, or incapacity, such as to require the immediate suspension of any such officer, the magistrate is authorized to order the same, reporting it with the other information required from him to the superintendent of police. Reg. VIII. 1809, sect. 5, cl. 5; and sect. 7, cl. 2.

Magistrate may immediately suspend officers in cases of gross misconduct.

1917. As a suspended officer is entitled, if restored, to the arrears of his salary, which have accrued during his exclusion from office, any extra charge, which arises from inattention to the orders for his restoration, may be retrenched, by order of government, from the allowances of the person by whose fault the restoration to office has been delayed after receipt of orders to that effect from a competent authority. C. O. No. 254 of vol. 1.

Rule regarding salary of suspended officer, if restored.

1918. Any other inferior native officer forming part of the fixed establishments whose salary does not amount to the sum of 10 rupees per mensem, may be appointed whenever vacancies occur in the situations of such officers, and on proof of misconduct or other sufficient cause may be removed by the magistrate, without any reference to any superior authority. But he is to record upon his proceedings the grounds upon which any native officer is removed by him; and he is required to exercise the power vested in him, in the appointment and removal of the inferior officers acting under him, with due regard to the public service and the rights of individuals, by selecting proper persons to fill all vacancies in the situations of such officers, and by continuing in office the persons appointed, whether by themselves or their predecessors, whilst they discharge the duties assigned to them with diligence and integrity. Reg. V. 1804, sect. 14. Reg. VIII. 1809, sect. 9.

The appointment and removal of officers, drawing less salary than 10 rupees, rests with the magistrate. But he is to select proper persons; and is not to remove them without cause; and is to record his reasons for removing them.

1919. The magistrate's order in regard to the appointment and removal of native [ministerial] officers receiving salary not exceeding ten rupees is in every respect final. Const. No. 904.

His orders are final.

1920. The magistrate may in addition to the general powers vested in him by the regulations for the punishment of any specific crime or misdemeanor, fine any officer under his authority for neglect of duty in a sum equal to one month's salary, and cause the same to be levied by a stoppage of the fixed allowance payable to such officer. Reg. VIII. 1809, sect. 5, cl. 5; and sect. 7, cl. 2.

Magistrate may fine any officer one month's salary,

but cannot award a higher punishment.

1921. The magistrate is not authorized to sentence to hard labor an officer guilty merely of neglect of duty, nor to adjudge a fine of more than one month's salary. Const. Nos. 192, and 712.

Session judge cannot interfere with the orders of the magistrate regarding his officers.

1922. It is not competent to a session judge to interfere with any order passed by a magistrate regarding the appointment, suspension, or removal of any ministerial or police officer, the revision of which is entrusted to the superintendent of police. Act. XXIV. 1837, sect. 5.

But he may direct the dismission of any officer convicted of a criminal offence.

1923. A session judge, holding a jail delivery, or the court of nizamut adawlut, may order the dismissal of any native officer convicted before him of a criminal offence, which under any express provision in the regulations is punishable by dismission from office; or, though not so expressly declared, if the conduct of such native officer appears, from any proceeding before the sessions court or nizamut adawlut, to be such as to require his removal from the public situation held by him. On the same being notified to the magistrate, or other European public officer, under whom the native officer so dismissed has been employed, it is the duty of the magistrate, or other European officer, to take measures for the appointment of a successor to the vacant office in conformity with the regulations. Reg. XXV. 1814, sect. 15. Reg. XVII. 1816, sect. 7, cl, 8.

What appeals lie to the superintendent of police.

1924. The appeals of parties seeking redress from orders of magistrates dismissing them from their situations, such orders not being part of the sentence passed in any criminal trial, cannot be heard by the session judge, but lie under the law to the commissioner. C. O. No. 35 of vol. 3.

What appeals lie to judge.

1925. Appeals from the orders of the magistrate preferred by officers other than ministerial or police officers[a] lie to the session judge. C. O. No. 119 of vol. 3.

Appeals may be forwarded by dawk;

1926. Commissioners may receive and act upon petitions from suspended officers forwarded by the dawk, provided they are written on stampt paper. Const. No. 344.

or may be presented to the magistrate, who is to forward them with the papers of the case, if written on stampt paper and presented within the proper period.

1927. Ministerial officers dissatisfied with the orders of a magistrate, may present their petitions of appeal to the magistrate, if written on the proper stampt paper; and, if presented within the usual period allowed to appellants, the magistrate is bound to forward the appeal with the papers of the case for the orders of the superintendent of police. In case the officer suspended or dismissed does not present his petition of appeal to the magistrate within the period allowed, he is to refuse to accept it, and is to refer the officer to a personal appeal at the office of the superintendent. C. O. Sup. Pol. L. P. No. 20 of 1838.

If the appeal is forwarded by dawk, it must be accompanied by copies of the proceedings appealed against.

1928. If the course prescribed in the above order is not adopted by police officers appealing, they must forward to the superintendent with their petitions of appeal copies of the proceedings ordering their dismissal, without which their petitions will not be attended to. One of the two courses referred to must be followed. C. O. Sup. Pol. L. P. No. 24 of 1844.

Superintendent of police may dismiss officers of his own accord.

1929. The superintendent of police is fully competent, of his own accord and on sufficient ground, to remove any of the officers, whom he is competent to remove on reference from the magistrate. Const. No. 62.

(a) This order refers in the original to officers attached to the jails; but is of course, in regard to them, superseded by Act XVIII. 1844.

1930. A commissioner of circuit has no power to declare a native officer perpetually excluded from future employ in his division, although he is of course competent to decline sanctioning his nomination to any responsible situation during the period he is in charge of the division. Const. No. 1065.

A commissioner cannot declare a person excluded from future employ in his division.

1931. The orders of the superintendents of police in regard to the appointment, suspension, or removal of a ministerial officer of a magistrate, passed under the provisions of this Act, are not open to revision by the nizamut adawlut. Act XXIV. 1837, sect. 6.

The nizamut adawlut cannot revise the orders of the superintendent of police.

1932. No report to the nizamut adawlut is necessary previous to the dismissal of any ministerial officer of a magistrate's court. It should be made to the superintendent of police, who is competent to pass such order as the case requires. Const. No. 792.

Magistrate need not report the dismissal of any officer to the nizamut adawlut.

1933. Nothing in this regulation is to be construed to preclude the government, or the court of nizamut adawlut, from ordering the removal of a native officer, upon just and sufficient ground appearing for such order; nor to prevent the exercise of the general authority vested in the nizamut adawlut by the regulations in force. Reg. VIII. 1809, sect. 13.

But government or the nizamut adawlut may order the dismissal of any officer.

1934. Appeals from orders for the removal of ministerial officers on the establishment of the magistrate and collector, employed indiscriminately in the departments of revenue and the administration of criminal justice, lie to the commissioner; unless a regular criminal trial has been held, in which case they would lie to the session judge. C. O. No. 177 of vol. 2.

Appeals from officers employed in both the revenue and judicial departments.

1935. A monthly report is to be made to the superintendent of police of the dismissals and appointments of ministerial officers, in addition to the reports made to him for confirmation, according to the form No. 7 of appendix F. C. O. Sup. Pol. L. P. No. 1 of 1839.

Monthly report of dismissals and appointments.

General rules.

1936. All native officers in the service of government are liable to removal from the public trusts committed to them, without proof of any specific act of criminality, whenever there is sufficient reason to believe them incapable, or neglectful of their prescribed duties, or in any respect unworthy of public confidence. Reg. VIII. 1809, sect. 5, cl. 5; sect. 7, cl. 2; and sect. 9.

All native officers are liable to removal without proof of any specific act of criminality.

1937. The imposition of heavy fines upon native servants is objectionable, as involving them in pecuniary difficulty, and inducing them to resort to improper practices for the purpose of indemnification. The preferable course is when an officer refuses to do that which his official duty requires of him, to transfer at once the office to a more obedient holder. C. O. No. 60 of vol. 3.

The imposition of heavy fines is objectionable.

1938. The fact of an officer's possessing much more property than the lawful emoluments of his office seem to authorize, without being able to give a reasonable account thereof, is a sufficient ground for presuming him a person unfit for public confidence. Const. No. 306.

The unaccountable possession of much property is a sufficient ground for dismissal.

1939. The criminal courts are authorized to require mochulkas or penal obligations for their good behaviour, in such sums as they judge proper, from their native officers. *Beng.* Reg. XIII. 1793, sect. 2. *Ced. Prov.* Reg. XII. 1803, sect. 2.

Mochulkas may be required from the native officers.

All native officers are to make a solemn declaration before entering upon the duties of their office.

1940. The serishtadars, or other head native officers, moonshees, mohurrirs, and nazirs, record keepers, and treasurers, as well as all other native officers of the criminal courts holding any situation of trust and responsibility in the public service, previous to entering upon the execution of the duties of their offices, are to make and subscribe the following solemn declaration in open court, before the European authority to whom they are subject:—"I, A. B., appointed to the office of serishtadar [or as the case may be] to the nizamut adawlut [or other court] solemnly declare that I will truly and faithfully perform the duties of the office to which I have been nominated to the best of my knowledge and ability; that I will not receive, directly or indirectly, any present or nuzzer, in money or effects of any kind from any party whomsoever, on acccount of any suit to be instituted, or which may be depending or have been decided in the court; that I will not knowingly permit any person or persons under my authority, or in my immediate service, to receive directly or indirectly any present or nuzzer, in money or effects, from any party or person whomsoever, on account of any suit to be instituted, or which may be depending, or have been decided in the court; and that I will not derive directly or indirectly any advantages or emoluments from my office, excepting such as the orders of government do or may authorize me to receive." *Beng.* Reg. XIII. 1793, sect. 4. *Ced. Prov.* Reg. XII. 1803, sect. 4. Reg. XVIII. 1817, sect. 2, cl. 1 and 2, and sect. 3.

The European officers are to attest such declarations.

1941. The European officers, before whom such declarations are required to be made and subscribed, are to attest the same as publicly read and subscribed before them, in pursuance of the above provisions; and are to be careful to enforce a due observance of the rule therein contained by the native officers appointed to act under them. Reg. XVIII. 1807, sect. 2, cl. 3.

Duties to be performed by native ministerial officers.

1942. The native officers attached to the courts are to procure all acts of the court to be executed; to translate and transcribe papers; and to arrange and keep the records of the court. They are to perform these duties in the manner and conformably to the rules, which the head of the office to which they are attached thinks it proper to prescribe. The native officers of each court are not to interfere in any other manner, publicly or privately, in any cause or matter depending before the court, or which has been, or is intended to be brought before it. *Beng.* Reg. XIII. 1793, sect. 8. *Ced. Prov.* Reg. XII. 1803, sect. 11.

Officers are prohibited from employing their private servants in the discharge of public duties;

1943. The whole of the officers of government are prohibited, under penalty of dismissal from office, from employing, directly or indirectly, their private servants of whatever description, or any other persons not being public officers duly appointed or nominated in conformity with the rules in force relative to such appointments, in the discharge of any part of their public duties, or in the execution of any public duty, in which the person so employed has not been duly authorized to act. Reg. VIII. 1825, sect. 2, cl. 1.

and from employing the public officers on their private business.

1944. The whole of the judicial officers are, in like manner and under the same penalty, prohibited from employing any of the public officers on their establishments (not being peons, or other inferior servants, in personal attendance upon a judge, magistrate, or other officer of government in the judicial department) in the performance of any part of their private business, or in the execution of any private trust relating to their personal concerns. Reg. VIII. 1825, sect. 2, cl. 2.

1945. The several officers of government in the judicial department, who are already restricted by their official oaths, or by the known declarations and orders of government, from deriving any personal advantage whatever from their fixed establishments of native officers, are further positively prohibited from making any alteration whatever in the distribution of the salaries of such officers, or in the number and designation of the several descriptions of native officers composing their authorized establishments without the express sanction of government. Reg. V. 1804, sect. 23.

No alteration is to be made in the salaries or the number or designation of the native officers.

1946. Nothing in this regulation is to be construed to empower the superintendent of police to authorize any addition to, or alteration in the distribution of, the fixed public establishments without the special sanction of government. Reg. VIII. 1809, sect. 12.

Nor can the superintendent of police authorize any alteration or addition.

1947. Native ministerial officers are not, under any circumstances, to be entertained on lower salaries than those fixed by the government for the situations they hold. C. O. No. 154 of vol. 3.

Officers are not to be entertained on lower salaries than those fixed.

1948. The practice of keeping ministerial officers in acting capacities for long periods is highly objectionable: whenever an officer nominates an individual to act in any situation, whose confirmation in the same requires the sanction of superior authority, he is to make a report to such authority as to the fitness of the officiating person within the period of six months from the date of his original nomination. C. O. S. D. A. No. 12, January 1, 1830.

Officers are not to be kept acting.

1949. Nothing in this regulation is to be construed to establish a claim of inheritance to any public office whatever; or to prevent the abolition of any such office, by order of government, whenever it is judged unnecessary to continue the same for the public service. Reg. V. 1804, sect. 24.

No office is hereditary.

1950. On the appointment of any native officer, who receives a salary of not less than 20 rupees per mensem, whether the situation to which he is nominated is of a judicial or ministerial nature, or connected with the police department, he is to be required to give a schedule of any landed property of which he may at the time be possessed, including not only land the proprietary right of which is vested in him, but any land or other real property whatever may be the nature of the tenure by which he holds it, the description of tenure being also recorded in the schedule. It is at the same time to be explained to him that should he subsequently make further acquisitions of the same description, it will be incumbent on him to communicate the circumstance within one month from the date of acquisition; should he fail to do so, or should it appear that he has wilfully omitted in his schedule any such property belonging to him at the time of filing it, he is liable to dismissal from office. In the *western provinces*, these schedules are to be registered in the office of the collector of the zillah in which the officer is employed; and copies of the same sent to the collectors in whose zillahs the property therein included is situated. In the *lower provinces*, the schedules are to be registered in the office to which the individual giving it is subordinate; and copies are to be sent to the collectors in whose districts the property specified is situated. C. O. Nos. 163, 166, and 170 of vol. 2.

Schedule of property is required from all native officers on their appointment.

1951. Security is to be taken from treasurers, nazirs, and other officers, who, in the discharge of their public duty, have charge of money or property, whether public or belonging to private individuals; and the sureties are to bind themselves to make good all

Security is to be taken from all officers entrusted with public money.

losses sustained by the default or fraud of the officer for whom they are bound. The amount of property to be pledged by the surety, and entered in the schedule at the foot of the bond, must be regulated according to the circumstances of each case and the amount or value of the money or property which may be likely to be left in the hands of the officer from whom the security is required: the surety is also to bind himself not to sell, or in other manner alienate the property in question until he is relieved from his responsibility. Care is to be taken to ascertain the sufficiency of the security; and its efficiency is to be carefully revised during the last week of December of each year; and a report of the result of the revision to be submitted in the form No. 26 of appendix C. C. O. S. D. A. No. 34, September 23, 1831.

Sufficiency of security to be tested yearly, and report made.

Report to be certified in particular form.

1952. The form prescribed above is to be uniformly engrossed on a sheet of foolscap paper; and the following certificate is to be inserted at the foot of it. "Certified that I have revised the securities of the officers above mentioned, and that I consider them good and sufficient. (Signed) A. B., judge, or magistrate, as the case may be." C. O. No. 216 of vol. 2.

Responsibility of officers vouching for the sufficiency of securities.

1953. Public officers vouching for the sufficiency of the securities render themselves responsible for the safety of the public funds committed to the charge of their ministerial officers, and they are to be held accountable for any insufficiency of security which is subsequently experienced. C. O. No. 171 of vol. 2.

These reports are to be sent to the superintendent of police in the lower provinces.

1954. In the *lower provinces*, the above security statements are to be forwarded by the magistrates to the superintendent of police, and not to the nizamut adawlut. C. O. No. 87 of vol. 3. C. O. Sup. Pol. L. P. No. 22 of 1838.

Form of security bond to be used in the western provinces.

1955. In order that the security bonds may comprehend all the obligations assumed by the sureties, judicial officers (in the *western provinces*) are required to have them drawn out according to the formula No. 27 of appendix C: and in reporting the result of the annual revision, they are to certify that the bonds have been carefully examined and found to correspond in their terms with that formula; and that memorials thereof have been registered in pursuance of the following instructions. C. O. No. 188 of vol. 3.

All security bonds are to be registered.

1956. With reference to the precedence granted to all registered documents by Acts I. and XIX. 1843, all security bonds executed by the treasurers, nazirs, and other ministerial officers attached to the judicial courts, and other documents likewise of a similar character, by the annulment or repudiation of which the interests of government are likely to be injuriously affected, are to be duly registered in conformity to the conditions of those enactments; [the authorities are to satisfy themselves that the lands, to which the registered security deeds relate, have not been already conveyed away by any previously registered deeds;](a) and such registration [and scrutiny](a) is to be deemed an indispensable preliminary to their acceptance as good and valid engagements. The fees attendant on this process are to be defrayed by those, from whom security is demanded, and whose tenure of office is dependant on their compliance with such requisition. C. O. No. 136 of vol. 3.

(a) The words within brackets are not contained in the circular of the western court.

1957. If it be shown on a civil prosecution that the nazir of a criminal court has wilfully misrepresented the value or sufficiency of any security, in regard to which he has been directed to enquire and report, and that loss has ensued in consequence of such misrepresentation on his part, he would be liable to the payment of damages at the discretion of the court before whom the suit is brought. Const. No. 1014.

Nazir is liable to pay damages for wilful misrepresentation of the sufficiency of security.

1958. When deposits are made by the sureties in public securities, they are to be endorsed over to the official head of the office, and deposited for safe custody with the sub-treasurer of the general treasury. Such securities are returnable only under an official order from the secretary to the government in the department to which the depositor belongs. Under these circumstances, if, with the permission of government, the parties should so desire it, the sub-treasurer is to draw the interest accruing on the securities in his custody, and pay it over to the officer concerned, in cash if in Calcutta, or by bill on the revenue treasury of the district, if the deposit is for due performance of duty in the mofussil. Govt. order in C. O. Sup. Pol. L. P. No. 12 of 1845. C. O. Acc. Gen. No. 94, September 29, 1845.

Rules for the endorsement and safe custody of public securities deposited in such cases.

1959. When the treasurer of a collectorate is also required to take charge of the foujdaree treasury, it is incumbent on the collector to insert in the security bond a clause rendering the sureties responsible for any abuse of trust by the treasurer in the foujdaree department. C. O. No. 51 of vol. 3.

Responsibility of collectorate treasurer taking charge of foujdaree treasury.

1960. All departments of the state are required not only not to invite, but positively to refuse to entertain an application for employment from any native, who is at the time of making the application in the public employ of a government office or department, unless they have previously received the full acquiescence of the head of such office or department. C. O. No. 66 of vol. 3.

One department is not to receive applications for employment from persons in the employ of another department.

1961. Representations from uncovenanted officers relating to their services are not to be forwarded to government by the head of the office. All persons desirous of bringing their claims prominently to the notice of government should forward their representations themselves by the public post. C. O. No. 68 of vol. 3. C. O. Sup. Pol. L. P. No. 23 of 1840.

Representations from uncovenanted officers to government to be forwarded direct.

Travelling allowance.

Lower Provinces.

1962. All amlahs, when on duty in the interior of the district, are to receive 3-10th extra pay as travelling allowance; except when they are required to accompany their superiors by dawk, in which case they are to receive an allowance at the rate of 4 annas per mile, and during halts at the rate authorized above. Lower Provinces, C. O. S. D. A. No. 50, September 20, 1839. C. O. No. 212 of vol. 3. C. O. Sup. Pol. L. P. No. 13 of 1839; and No. 10 of 1845.

Western Provinces.

1963. The travelling allowance of all uncovenanted officers, christian or native, in the revenue, judicial, and political branches of the service, as detailed below, is to be 3-10th of the salary drawn by each individual. When the officer is required to proceed by dawk, under special authority from government, he is to receive at the rate of 4 annas per mile, during the time he may so travel, and on the days on which he may not so travel, he is to receive at the aforesaid rate of 3-10th of his salary. This scale of allowance is applicable to the fixed establishments of public covenanted officers, when moving from the station, or

usual fixed residence of such officers;—to all principal sudder ameens, sudder ameens, moonsiffs, deputy collectors, and deputy magistrates, when required to travel within their districts, or during transit from one district to another, when ordered on the public service, and without a view to their promotion or to their acting in a higher grade;—to all najeebs, burkundazes, or men of the provincial battalions, when ordered within the limits of the district or division within which they are ordinarily required to serve. Orders of government, N. W. P. July 11, 1846.

Leave of absence.

1964. The following are the rules for regulating leave of absence and acting allowances to uncovenanted public officers:—

During vacations.

[I.] Heads of offices and departments may grant to their subordinates leave of absence without deduction from salary, during the vacations authorized by government in each department, and it shall not be necessary to report the same to any higher authority.

On private affairs.

[II.] In addition to the above, the local government will, at the recommendation of the head of a department and on sufficient cause being shown, grant special leave of absence on private affairs, for not more than six months, to any place within the limits of the East India Company's charter, one-half of the absentee's salary being deducted for such period of absence.

On medical certificate.

[III.] The local government will also grant leave of absence on medical certificate, for any period, not exceeding one year, to any place within the limits of the East India Company's charter, one-half of the absentee's salary being deducted for such period of absence. [IV.] In cases of extreme urgency the heads of offices are authorized to grant leave of absence on medical certificate, to the extent of a month, subject to the deduction specified in the preceding rule, reporting the same to government for sanction. [V.] If the period of leave granted under rule III be less than one year, the government will extend the same, whether continuously or otherwise, to the full period allowed by the rule, on the production of a medical certificate shewing the necessity for such an extension. [VI.] But after the enjoyment of a full year's leave on medical certificate, whether continuously or by instalments, no further leave will be granted under rule III until after the lapse of three years from the expiry of previous leave under that rule.

Absence without leave.

[VII.] Absence without leave will render the absentee liable to loss of appointment, and will be attended with entire forfeiture of salary for the whole period of such absence.

Salary before joining appointment.

[VIII.] No person appointed to a situation under the government shall draw the salary of his appointment for any period prior to the date of his joining it. [IX.] An officer holding a situation appointed to one of equal or higher value, will, until he joins, draw so much of the salary of his new office as may be equal to the salary of his former situation, provided he does not exceed the time allowed for joining under the following rule: should he do so, no salary will be passed to him for such period in excess.

Rate of travelling.

[X.] The time ordinarily allowed for joining an appointment is to be calculated at the rate of 15 miles a day (sundays excepted), together with a week to prepare for the journey, but on occasions of emergency it will be optional with the government to prescribe the period within which any journey is to be performed.

Person officiating temporarily.

[XI.] A person officiating temporarily in any situation on the occurrence of a vacancy, or during the absence of the real incumbent, will if he hold no other appointment, draw one-half the salary of such situation, and if he hold any other situation of less value, he will receive half the fixed salary of his own appointment, together with half the fixed salary of that in which he officiates, but no additional expense is to be incurred by the absence of any officer on leave.

Rules applicable to whom.

[XII.] These rules are to be held applicable to all officers in the uncovenanted service of the government, who may be in the receipt of salaries of 100 rupees a month or upwards. To all others their spirit is to be applied so far as circumstances will permit. To officers receiving their appointments direct from government, leave of absence will be granted by the government only, and in respect to other officers whose appointment and removal rest with their immediate superiors or with the heads of departments, it will be optional with the local governments to delegate to such heads of offices and departments, power to act upon the rules without special reference to

higher authority. [XIII.] But it is to be clearly understood, that no leave of absence on private affairs shall be claimable by any party whatever under these rules as a matter of right, but that such leave shall be granted only at the pleasure of the government or its authorized officers, when the concession of the indulgence in no way interferes with the interests of the public service.

on private affairs not claimable.

Orders of Supreme Government, July 24, 1846.

1965. The nazirs of the several courts of judicature are allowed to appoint their own naibs, and the mirdahs or peons, or any similar descriptions of public servants employed under their immediate direction and control; and to fill up all vacancies, which from time to time occur in such appointments, subject to the approbation of the judges and magistrates superintending the courts to which they are attached. They may also remove the persons so appointed by them, provided they can state sufficient cause to the satisfaction of the judge or magistrate; but not without his previous knowledge and sanction. The nazirs are to enter into a mochulka or penal obligation, in such sum as is required by the courts to which they are attached, for the good behaviour of the naibs, mirdahs, and peons, whom they appoint. *Beng.* Reg. XIII. 1793, sect. 2. *Ced. Prov.* Reg. XII. 1803, sect. 2. Reg. V. 1804, sect. 12.

Nazirs are to appoint their own naibs and peons; and to execute mochulka for their good behaviour.

1966. The payment of a commission of one anna in the rupee is authorized to be made, on the proceeds of the sale, to the nazirs of the foujdaree courts, who are ordered to sell unclaimed property, as a remuneration for proper care in the preservation of the property, and for seeing that it is fairly and properly sold at auction, subject to the condition that the duty has been, in each case, performed to the satisfaction of the head of the office. C. O. No. 116 of vol. 3.

Nazirs may receive a commission of one anna in the rupee on the sale of unclaimed property.

1967. The appointment and removal of English writers, natives of India, is to be governed by the above rules. Const. No. 31.

English Writers are subject to the same rules as other amlah.

SECTION II.

OF LAW OFFICERS.

1968. The law officers of the sudder dewanny adawlut are the law officers of the nizamut adawlut; and the law officers of the civil courts are the law officers of the court of sessions of the same zillah.(a) *Beng.* Reg. XII. 1793, sect. 4. *Ced. Prov.* Reg. XI. 1803, sect. 4.

Appointment.

1969. The Mahomedan law officers of the sudder dewanny adawlut, and the civil courts, are to make the following solemn declaration in their respective capacities of law officers to the nizamut adawlut, and the courts of sessions: "I, A. B., Mahomedan law officer of the nizamut adawlut (or of the court of sessions of zillah ———), solemnly

Solemn declaration to be made on entering office.

(a) The rules for the nomination, appointment, and removal of law officers belongs rather to the department of civil law; and have therefore been excluded from this work.

declare that I will truly and faithfully perform the duties of Mahomedan law officer of the court, according to the best of my knowledge and ability, and that I will not receive, directly or indirectly, any present or nuzzer, either in money or in effects of any kind, from any party in any suit or prosecution to be instituted, or which may be depending, or have been decided in the nizamut adawlut (or sessions court) of which I am law officer; nor will I directly or indirectly derive any advantage or emolument from my office, excepting such as the orders of government do or may authorize." *Beng.* Reg. XII. 1793, sect. 6; and Reg. IX. 1793, sects. 37 and 71. *Ced. Prov.* Reg. XI. 1803, sect. 6; Reg. VII. 1803, sect. 8; and Reg. VIII. 1803, sect. 8.

Session judge may appoint a person to officiate as law officer in case of emergency.

1970. Whenever from the absence of the proper law officer, or other emergency, the services of an officiating law officer are necessary to carry on the duties of the sessions; and there is not sufficient time, without inconvenience, to make a previous reference on the subject to the nizamut adawlut, it is competent to the session judge to employ a duly qualified individual of the Mahomedan persuasion, to officiate as law officer; a special report of such temporary arrangement being immediately made in each instance for the information and orders of the nizamut adawlut. Reg. IV. 1830, sect. 3.

Salary of such officiating officers.

1971. Persons officiating as law officers under the above provisions, if not holding any other office under government, are entitled to receive the same pay as the Mahomedan law officers of the courts, viz. 100 rupees per mensem, during the time they are employed on the sessions. The judge should charge the pay of the officiating officer in his contingent bill, submitting to the civil auditor the order of government, or of the nizamut adawlut, as his authority for the charge. C. O. No. 61 of vol. 2.

Session judge is to report incapacity or misconduct of law officer.

1972. The session judge is to report to the nizamut adawlut every instance, in which it appears that the Hindoo or Mahomedan law officers have shown incapacity for their offices, or have been guilty of misconduct in the performance of their duties, or of any acts of profligacy in their private conduct. *Beng.* Reg. IX. 1793, sect. 60. *Ced. Prov.* Reg. VII. 1803, sect. 29.

Magistrate has no control over law officer.

1973. A magistrate has no control over the law officer of the sessions court in such capacity; and is not authorized to direct the government pleader to communicate with such officer on a matter relating to a futwa delivered by him in a criminal trial before the sessions. Const. No. 631.

Prohibited from engaging in trading speculations.

1974. Native judges of all grades, and law officers, are prohibited, under pain of dismissal from office, from being engaged in any trading speculations. If such speculations devolve upon any such officer by inheritance, he is within one month to make known the circumstance to the judge, or to the register of the sudder dewanny adawlut, and to terminate his connection with such transactions at the earliest practicable period. If he is unable to do so within one year, he is either to resign his situation, or to report the circumstances of the case to the judge or register, who is to forward it to government, or the sudder court, as the confirmation of the officer is vested in one or other of those authorities, with his own opinion as to the propriety of allowing the officer a further period for the purpose of bringing his transactions to a close. Candidates for such offices are to certify in

their applications, that they are not engaged in any trading speculation; and if it is subsequently discovered that they were so engaged at the time of making their application, they will be liable to be dismissed. C. O. No. 109 of vol. 3.

Prohibited from lending money to persons within their jurisdiction.

1975. The rule in sect. 2, Reg. XXXVIII. 1793 (*Ced. Prov.* sect. 2, Reg. XIX. 1803) prohibiting public officers from lending money to persons within their jurisdiction, is extended to all uncovenanted judicial officers. This prohibition does not, however, extend to the officers on the ministerial establishments of the several civil and criminal courts, but to those functionaries only, who are legally empowered to exercise judicial functions. C. O. *Lower Provinces*, No. 186, *Western Provinces*, No. 198, of vol. 3.

Prohibited from holding lands.

1976. Uncovenanted judicial officers, as all other public officers, are prohibited from holding lands in any district in which they exercise civil authority. C. O. No. 202 of vol. 3

Travelling allowance.

1977. The travelling allowance of a law officer on circuit is 2 rupees a day, if his salary exceeds 100, and is not above 200 rupees per mensem. If above 200 rupees per mensem it should be 3 rupees a day. C. O. *Western Provinces*, No. 106, *Lower Provinces*, No. 120, of vol. 2.

Leave of absence.

1978. Applications of law officers for leave of absence are to be forwarded to the nizamut adawlut by the session judge, with his opinion as to the propriety of compliance with the same. C. O. No. 77 of vol. 3.

Salary during leave.

1979. A deduction of one half of the fixed salary of a law officer is to be made in the event of absence from his station at any other period than the regular vacations. C. O. S. D. A. No. 172, November 26th, 1841.

SECTION III.

OF CHARGES OF CORRUPTION, ETC.

Summary inquiry to be instituted if a native ministerial officer is accused or suspected of embezzlement of money entrusted to him in his official capacity.

1980. Whenever any native officer attached to a civil or criminal court, is charged with having embezzled any money or other property paid into, or deposited in, the court to which he is attached; or received by him in his official capacity in execution of a decree, or on account of a deposit, or on any other account whatever; or whenever the judge or judges of a civil or criminal court have reason to suspect any such embezzlement, on the part of a native officer attached to the court, they are immediately to institute a summary inquiry to ascertain the truth of such charge or suspicion; and are, at the same time, to require the native officer accused, or suspected, to give sufficient security for his attendance during the inquiry. In the event of such security not being given, and of its appearing necessary to keep the officer in custody pending the inquiry, it is competent to the judge or judges to order the same, and to keep the party in the custody of peons, or to confine him in the civil jail, until he gives the required security, or his detention appears no longer necessary. Reg. XVIII. 1817, sect. 7, cl. 2.

Rules for the recovery of money so embezzled.

1981. When the summary inquiry has been completed, if it is established thereby that any money or other property has been embezzled by the person accused, or suspected, in his official capacity, he is to be required to pay the same into court within such time as is limited for that purpose; and on his failure to comply with such requisition, it is recoverable from him, as well as from his surety, if he has given security on account of the office held by him, by the usual process of recovery in execution of judgments of the civil courts. Reg. XVIII. 1817, sect. 7, cl. 3.

Salary of officer may be attached.

1982. Any sum of money actually due to a public servant, on account of salary, is liable to attachment in the same manner as other property;—the officer attaching such money is at liberty to call on the disbursing officer to assist him in effecting the attachment; and such disbursing officer is required to give his assistance. Const. No. 827.

But the money or property so embezzled is to be refunded to the party, who deposited it, whether it is recovered from the embezzling officer or not.

1983. Whenever it is established by the above process that any native officer attached to a civil or criminal court has embezzled any money or other property, duly paid into or deposited in the court to which he is attached; or regularly received by him in his official capacity in execution of a decree, or on account of a deposit, or on any other account whatever; it is the duty of the European controlling authority to refund to the party or parties, whose property has been so embezzled, the amount or value of the embezzlement from the public treasury, in the first instance, without reference to the solvency or otherwise of the defaulter or his surety; the government reserving to itself the right of adopting such measures for the recovery of the money so refunded, as is deemed expedient with reference to the nature and circumstances of each case. Reg. III. 1827, sect. 6.

Responsibility when goods are stolen from the magistrate's malkhanah.

1984. The government cannot be held responsible, under the above rule, to make good to the owners the loss of property stolen from the malkhanah of a magistrate's office; but in cases where neglect or want of care for the prevention of such loss, or the due preservation of the property from such accidents, is proved, the officers in whose custody the goods lost or stolen were placed are to be called upon to make good the value of them. C. O. Sup. Pol. L. P. No. 24 of 1840.

Summary decree must be passed, before the money is recoverable.

1985. The summary decree prescribed above, adjudging the exact sum recoverable, must be passed before the judge can proceed to realize the amount embezzled by a native officer. Const. No. 334.

Similar mode of proceeding, when a native officer withholds any public accounts.

1986. A similar mode of proceeding is to be observed, when a native officer attached to any civil or criminal court of judicature, withholds any public accounts which it is his duty to prepare and furnish; and the summary judgment in such cases is not only to order the immediate delivery of the accounts withheld, but is also to impose such fine to government as appears just and proper on consideration of all the circumstances of the case, and the situation of the party. Reg. XVIII. 1817, sect. 7, cl. 4.

Punishment of native officers altering or changing any official papers.

1987. Any person altering or changing any papers in a government office is liable to the punishment of forgery under Reg. II. 1807; and it is no excuse to say that the papers were altered or changed by order of the superior amlah, or the European officer presiding. C. O. No. 57 of vol. 1.

1988. Though a summary inquiry into cases of embezzlement of the ministerial officers of the judge's court may be conducted by him under the above rules, he cannot commit for that offence; this duty being left to the magistrate, to whom the judge should submit his proceedings if grounds appear for subjecting the accused to a criminal trial, and the magistrate is in such case to use his discretion in committing or releasing the accused, on a fair consideration of the evidence adduced. Const. No. 691.

The above rules do not authorize a judge to commit an officer of his court for such offence.

1989. The ministerial officers are amenable to the courts to which they are attached for acts of corruption or extortion; and the courts are empowered to receive any such charges that are preferred against them. Previous however to receiving the charge, the courts are to require the complainant to make oath [or solemn declaration] to the truth of it; and unless the complainant previously takes the oath, or subscribes such declaration, the courts are not to receive the charge. *Beng.* Reg. XIII. 1793, sect. 9, cl. 1. *Ced. Prov.* Reg. XII. 1803, sect. 12, cl. 1.

Ministerial officers are amenable for corruption to the courts to which they are attached.

1990. Security is not to be demanded, in the first instance, for the prosecution of any such charge. But in the event of its appearing necessary at any time in the course of the enquiry, sufficient hazirzaminee security is to be required from the accuser to attend and prosecute the charge to a conclusion. Reg. X. 1806, sect. 10.

Security may be demanded from the person bringing such charge at any time.

1991. The nizamut adawlut is empowered to receive any charge of corruption or extortion, not relating to any suit or matter depending before them, or decided by them, that is preferred to them against any ministerial officer of a sessions court, or of the court of a superintendent of police, or of a magistrate, and to refer it to the court to which the accused is attached by a precept under the seal of the court and attested by the register, provided the complainant proves to their satisfaction, that he preferred the charge in the first instance to such court, and offered to make the required oath or declaration, and that the court notwithstanding omitted or refused to receive the charge; and moreover makes the required oath or declaration prescribed above. But if any person prefers a charge of corruption or extortion against any ministerial officer of such court to the nizamut adawlut, in any appeal or matter which is depending, or has been decided, in the two last mentioned courts, the courts are to receive the charge, and to refer it to the court to which the accused is attached without previous enquiry, provided the complainant previously makes the oath or declaration required above. *Beng.* Reg. XIII. 1793, sect. 9, cl. 2. *Ced. Prov.* Reg. XII. 1803, sect. 12, cl. 2.

The nizamut adawlut may receive charges against the officers of a sessions court, or of the superintendent of police, or of a magistrate.

How to proceed on receiving such charges.

1992. The superintendents of police are empowered to receive any charge of corruption, not relating to any suit or matter depending before them, or decided by them, that is preferred to them against any of the ministerial officers of the magistrates within their respective jurisdictions, and to refer the charge to the magistrate to whose court the accused is attached, provided it is proved to their satisfaction that the accused preferred the charge in the first instance to such magistrate, and offered to make the oath or declaration required, and that the magistrate notwithstanding omitted or refused to receive the charge. But if any person charges a ministerial officer of any magistrate with corruption or extortion in any matter which is depending before or has been decided by the superintendent of police, the charge is to be received, and referred to the magistrate, to

The superintendent of police may receive charges against the ministerial officers of the magistrates.

How to proceed on receiving such charge.

whose court the accused is attached, without further enquiry, provided the complainant previously makes the prescribed oath or declaration required above. *Beng.* Reg. XIII. 1793, sect. 9, cl. 4. *Ced. Prov.* Reg. XII. 1803, sect. 12, cl. 4.

How the nizamut adawlut is to proceed, if there appears objection to referring the charge to the court to which the accused officer is attached.

1993. If the nizamut adawlut receive a charge of corruption or extortion against any ministerial officer of a sessions court, or of a superintendent of police, or magistrate, and there appears, upon a consideration of the circumstances of the case, any objection to referring the charge to the court to which the accused is attached, they are empowered, according as they judge expedient, either to cause the charge to be tried by the sudder dewanny adawlut, or, if the charge is against any ministerial officer of a magistrate, to cause it to be tried by the zillah court to which such magistrate is subordinate. *Beng.* Reg. XIII. 1793, sect. 9, cl. 5. *Ced. Prov.* Reg. XII. 1803, sect. 12, cl. 5.

How the superintendent is to proceed, if there is objection to referring the charge to the magistrate to whose court the accused is attached.

1994. If a superintendent of police receives a charge of corruption or extortion against any ministerial officer of a magistrate, and there appears, upon a consideration of the circumstances of the case, any objection to referring the charge to the magistrate to whose court the accused is attached, he may cause it to be tried by the zillah court to which such magistrate is subordinate. *Beng.* Reg. XIII. 1793, sect. 9, cl. 6. *Ced. Prov.* Reg. XII. 1803, sect. 12, cl. 6.

Charges of corruption and extortion against ministerial officers are civil actions, and to be prosecuted in the civil courts.

1995. Charges of corruption or extortion preferred against the ministerial officers of any court under this section, are to be considered as civil actions, and are to be prosecuted in the civil courts. Conformably to this rule, when the nizamut adawlut receive any such charge against their own officers, or exercise the powers vested in them by clause fifth, they are to direct the complainant to prosecute the charge in the sudder dewanny adawlut; and whenever the other courts receive any such charge against any of their own ministerial officers, or the ministerial officers of any subordinate court, or in the event of any such charge being referred to them, they are to direct the complainant to prosecute the charge before the civil court. *Beng.* Reg. XIII. 1793, sect. 9, cl. 7. *Ced. Prov.* Reg. XII. 1803, sect. 12, cl. 7.

What award may be adjudged by the civil court.

1996. If a native ministerial officer, who is prosecuted for corruption or extortion under this section, is proved to have received or taken the whole or any part of the money or property which he is charged with having received or taken, the court is to adjudge him to refund the amount of the money, or value of the property, which he is proved to have so received or taken, with interest, when it is a case of money taken, at such rate not exceeding 12 per cent. per annum, as to the court appears equitable, and to pay full costs to the plaintiff in the suit. The court is not, in such case, competent to award any fine against the defendant. The courts may suspend a native officer against whom a charge of corruption or extortion is preferred, until the final decision has passed, if they see cause for so doing. *Beng.* Reg. XIII. 1793, sect. 9, cl. 8. *Ced. Prov.* Reg. XII. 1803, sect. 12, cl. 8. Reg. III. 1827, sect. 3.

The accused officers may be suspended.

If the charge is not proved, the accused may sue the accuser in the civil court.

1997. If any person prefers a charge of corruption or extortion against any ministerial officer under this section, and the charge is not proved, the accused is to have the option of suing the accuser for damages in any civil court to which he is amenable. *Beng.* Reg. XIII. 1793, sect. 9, cl. 12. *Ced. Prov.* Reg. XII. 1803, sect. 12, cl. 12.

1998. The above rules are applicable to charges of corruption or extortion preferred against the Hindoo or Mahomedan law officers of the several courts. *Beng.* Reg. XII. 1793, sect. 8, cl. 1. *Ced. Prov.* Reg. XI. 1803, sect. 8, cl. 1.

Law officers are subject to the same rules.

1999. In explanation of the above provisions for a civil action, it is declared that those provisions, the principal object of which is to enable individuals, who are aggrieved by any of the native officers in question, to obtain redress by an action in the civil courts, are not meant to preclude a criminal prosecution in cases of corruption, extortion, or embezzlement, which appear to call for exemplary punishment. Reg. XVIII. 1817, sect. 6, cl. 1.

The above rules do not preclude a criminal prosecution for corruption, extortion, or embezzlement.

2000. Whenever there appear to be sufficient grounds for a criminal prosecution against any law officer, or ministerial native officer, on a charge of corruption, extortion, or embezzlement,—whether the civil action provided for above has been brought or not, and whatever, if brought, has been its result,—he is liable to a criminal prosecution before the magistrate, and sessions court, as provided for in other cases of misdemeanor by the regulations; and, on conviction before the sessions court, or nizamut adawlut, he is to be subject to discretionary punishment to the extent, and under the provisions, stated in sect. 3, Reg. II. 1813,* with respect to native officers convicted of making use of the public money entrusted to their care. Reg. XVIII. 1817, sect. 6, cl. 2. Reg. III. 1827, sect. 4.

Any law officer, or ministerial officer, may be prosecuted criminally whether the civil action has been brought or not, and whatever is its result. Punishment in such cases.

* *v. para.* 2010.

2001. In such cases the prosecution should be public, and conducted by the vakeel of government. C. O. No. 67 of vol. 1. Const. No. 58.

Prosecution to be by the government vakeel

2002. Under the above provisions, a magistrate is competent to entertain and investigate a charge of corruption preferred against an officer on the establishment of the commissioner of revenue and circuit. Const. No. 649.

Magistrates may take up charges against officers of commissioner's court.

2003. A special report of the convictions and sentences which take place under the above rule is to be submitted to government for the purpose of determining whether the guilty persons shall be declared incapable of again serving government in any public capacity. Reg. XVIII. 1817, sect. 6, cl. 3.

Special report of such cases to be sent to government.

2004. The magistrate is competent to pass sentence of punishment on a conviction of a native ministerial officer of bribery or corruption to the extent of the powers vested in him by the regulations, when such punishment appears to him, on a consideration of all the circumstances of the case, to be adequate to the degree of criminality of the accused: otherwise, he should commit to the sessions court. Const. No. 237.

Power of magistrate in such cases.

2005. A provincial court having commenced an inquiry into the conduct of a native officer, were informed that they should complete it; and, if they considered the case to call for exemplary punishment, direct the government pleader to institute a criminal prosecution against the defendant before the magistrate; but that in the event of their not deeming it necessary to adopt this measure, it would of course be optional with the prosecutor to do so himself, or to seek redress by instituting a suit against the defendant in the civil court. Const. No. 737.

Cases requiring exemplary punishment should be prosecuted criminally. If the court deems this unnecessary, the complainant may prosecute criminally or in the civil court.

The civil court may enforce the refund of money corruptly taken without civil action, on production of certified copy of conviction in criminal court.

2006. It is not necessary for any party, from whom money or property has been corruptly taken or extorted, to institute a civil action for the recovery thereof; but on proof of the charge in a criminal prosecution for those offences, a certified copy of the conviction by a sessions court, or the nizamut adawlut, is to be received as sufficient authority for enforcing the refund of the amount or value so taken with interest, on application to that effect being preferred by the aggrieved party to the civil court on the stampt paper required for miscellaneous petitions. Reg. III. 1827, sect. 5.

Native revenue officer guilty of corruption.

* *v. para.* 888.

2007. Bribery and corruption on the part of native ministerial officers in the revenue department, are punishable as misdemeanors under the rules laid down in cl. 7, sect. 2, Reg. LIII. 1803*. Const. No. 1002.

Giving bribes to the amlah is a misdemeanor.

2008. Giving bribes to the amlah of a public officer for corrupt purposes, is clearly a misdemeanor both according to the English and Mahomedan law; and, though not specifically mentioned in the regulations, the individual committing it is unquestionably liable to a criminal prosecution. Const. No. 522.

Native officers are not to make use of public money entrusted to them.

2009. Khazanchies, tehsildars, and other native officers entrusted with the public money, are strictly prohibited from making use of such money for their own advantage, or that of any other individual. Reg. II. 1813, sect. 2.

Punishment to which persons infringing this rule are liable.

2010. Any person infringing the rule contained in the foregoing section is to be deemed guilty of a misdemeanor, and is to be punished, on conviction thereof before a sessions court, at the discretion of the said court, under the authority vested in such courts by cl. 7, sect. 2, Reg. LIII. 1803, in cases liable to discretionary punishment: provided, nevertheless, that no person convicted of such offence is to be sentenced by a session judge to the punishment of stripes, or to hard labor. If in any instance imprisonment for the term of 7 years appears to the session judge to be an inadequate punishment for the offence, he is to transmit the trial, with his sentiments thereupon, to the nizamut adawlut for the final sentence of that court. Reg. II. 1813, sect. 3.

Such cases to be reported to government.

2011. A special report is to be submitted to government respecting all convictions and sentences, which take place under the provisions of this regulation, in order that government may have an opportunity of considering, whether the guilty persons should not also be declared incapable of again serving government in any public capacity. Reg. II. 1813, sect. 4.

These rules are applicable to native officers in the commercial department.

2012. The above provisions are still applicable to native officers employed in the commercial department entrusted with public money, and are not affected by the provisions of Reg. IX. 1829. Const. No. 903.

CHAPTER VI.

OF JAILS.

SECTION I.

OF THE JAIL, AND JAIL DISCIPLINE.

System of jail discipline.

2013. It is competent to the governor general, by an order in council, to issue such orders as he may, from time to time, deem necessary, for the introduction of a system of discipline into the jails, calculated both to reform the convicts, and to render their imprisonment efficacious as an example to deter others from the commission of crime. Reg. II. 1834, sect. 7.

Control of jails vested in magistrate and session judge under the orders of the local government.

2014. So much of the provisions of any Regulation, or Act, as vests the judges of circuit, the commissioners of circuit, the superintendents of police, and the sudder nizamut adawlut, with control and superintendence over jails, the prisoners confined in them, the establishments thereunto belonging, and the places of banishment or transportation of prisoners, is repealed. The whole of such control and superintendence is vested in the magistrates and joint magistrates acting under the instructions of the session judges; and the magistrates, joint magistrates, and judges are to be guided in regard to all matters relating to the jails under their charge, the prisoners confined in them, the establishments thereunto belonging, and the places of banishment or transportation of prisoners, by such orders as they may receive from the local government. Act XVIII. 1844.

Nizamut adawlut not to be addressed regarding.

2015. As the nizamut adawlut has been relieved by the above Act from the duty of supervising the management of jails and all matters therewith connected, the criminal authorities are to address themselves direct to government on all matters indicated in that Act, and are to be guided by such instructions as they receive from government. C. O. Nos. 180 and 191 of vol. 3.

Officer in charge is solely responsible; and is to forward reports.

2016. The magistrates, joint magistrates, or other officers in direct charge of jails, are to be held solely responsible for the management of the same to government. The officers in question are to forward the monthly statements of prisoners, and the half-yearly and annual reports, through the session judges to government, receiving through the session judges from government all orders regarding the internal economy of jails, their discipline, establishments, employment of convict labor, and every thing connected with their general management. *Bengal* Govt. C. O. No. 1072, October 10, 1844.

Allipore jail.

2017. The duty of inspecting and supervising the Allipore jail, which by sects. 11 and 12, Reg. XIV. 1816 is vested in the nizamut adawlut, is now transferred to the judge of the 24-pergunnahs, whose duties in regard to the said jail are the same as those prescribed for session judges generally, as above. *Bengal* Govt. C. O. No. 1072, Oct. 10, 1844, para. 10.

Superintendent of police cannot interfere.

2018. A commissioner of circuit is not authorized, either as judge of circuit or as superintendent of police, to issue orders direct to jail officers regarding the management of the jails. But under certain very urgent circumstances in the absence of the magistrate it was held that the commissioner of circuit, who was also superintendent of police, was justified in directly interfering with the management of a criminal jail. Const. Nos. 746, and 909.

Magistrate and surgeon to visit the jail weekly;

2019. The magistrates are required to visit their jails weekly. The surgeons at the station, who are uniformly to reside on the spot, besides their daily attendance at the hospital, are also to inspect the jails once a week, and make a report to the magistrate at each visit on the general health of the prisoners, the quality of the food supplied to them, the state of the jails with regard to cleanliness, and generally any circumstances relative to the care and condition of the prisoners which may come to their knowledge. The visits of the magistrate are to be made without previous notice to the officers of the jail, and not at any fixed period of time. Jail rules, sect. 9, paras. 2 and 3.(a)

and judge monthly.

2020. The session judge is to visit the jails monthly, to enquire into their condition and that of their inmates; and to submit to government, when forwarding the periodical statements of the magistrates, or immediately in urgent cases, their own remarks on the condition of the jail for such orders, either in regard to individual cases, or the general conduct of the jail duties, as appear to be required. *Beng.* Govt. C. O. No. 1072, Oct. 10, 1844.

Judge may take armed men into the jail.

2021. The rule precluding the admission of armed men into the jail is not intended to apply to persons whom the session judge takes with him on his visits to the jail. C. O. No. 229 of vol 1.

Certain rules to be prescribed by magistrate.

2022. The magistrate is to prescribe a set of written rules for the internal economy of his jail,(b) relating to the articles which may be admitted into the jail for the prisoners,

(a) The jail rules are quoted from the compilation printed at the Baptist Mission Press in 1828.

(b) "In the first place I would mention the plan which I have adopted, of ticketing the prisoners. Every prisoner is supplied on his entering the jail, with a wooden ticket, which bears the same number as the warrant (perwannah) under which he is sentenced; should two or more prisoners be included in one perwannah, each of them bears the same number, with the addition of 1, 2, or 3 as his name may stand in the perwannah. His blanket and coat are stamped also with the same number. This not only prevents the thefts and the disputes regarding clothing which used to occur, but induces the convict to preserve it with greater care. This system also facilitates the exact registration of all the prisoners, and the register affords immediate information of their names, their crimes, the date of their sentence and its expiration, and the authority by which the sentence has been passed. Whereas, previously, if the jail darogah had been asked the name, or crime, or sentence of any convict, he would have acknowledged his ignorance, and then proceeded to seek for the required information through his books. He would probably have found a convict of the same name, but the son of another person under another sentence. After pursuing his search through more pages, the required name would at length have been discovered, and the information given. But under the ticket system, you ask the man his number, and looking down the margin of the register you immediately discover all the information required.—The

the hours when those articles may be admitted, and the persons who may be permitted to converse with the prisoners; and the jailor and his deputy, as well as the commanding officer of the jail guard, are to be held responsible for the due observance of such rules, or for the immediate report of any breach of them to the magistrate. Jail rules, sect. 9, para. 4.

Rules prescribed by magistrate to be translated and hung up in the jail.

2023. All orders and regulations relating to the interior economy of the jails, the duties of the jailor, his officers, and the military guard, are to be translated into the native languages, and copies made of the same, and hung up on a board, in a conspicuous part of the jail, in the jailor's apartment, and in the guard-room, for general information. Jail rules, sect. 9, para. 30.

Jailor not to delegate his duties without order.

2024. In the absence of the jailor, the magistrate may authorize his naib to perform the duties of that officer; but without the authority of the magistrate the jailor is not to delegate his personal duties to his naib, or to any other person. Jail rules, sect. 9, para. 17.

prisoners are turned out of their sleeping wards at daylight, and five convicts are allotted to the charge of each burkundaz. As he leaves the jail, the darogah delivers to him a paper ticket, in which are detailed his own name, the names of the five convicts allotted to him, and the date of the month; and at the same time the jailor enters, under its particular heading, the nature of the duty on which they are to be employed. The nature of the labor of convicts working outside the jail differs every day, and the tickets also are changed every week, as well as the convicts allotted to each burkundaz. Thus, are prevented the fulfilment of any previous arrangements between convicts and their friends to meet at particular spots, and the power of selecting particular duties of an easy nature; and a system of more equal distribution among all the convicts of hard and easy labor is in operation, than obtained when the convicts and their burkundazes could arrange among themselves to proceed to chosen employments. These tickets are re-delivered to the darogah on the return of the burkundaz and his assigned convicts in the evening. At the end of the week the original tickets are brought for my signature, which gives me an immediate opportunity of observing, by a glance at their contents, if any favoritism has been shewn in the distribution of labor.—Convicts sentenced to hard labor, are thus distributed to their several duties. Previous, however, to leaving the jail, each convict neatly folds up his blanket (this may appear a small matter to mention, but it has been adopted as a measure of economy to obviate the wear and tear of the convict's blanket which obtained when his lotah, thalee, and other properties were tied up by the four corners, as well as to prevent the concealment of unauthorized acquisitions) and puts it into a recess fixed in a shed erected for this purpose. This shed is lined with racks, on which are marked numbers from one to the corresponding number of prisoners in jail, each recess of the rack being supplied with a wooden ticket corresponding with the number stamped upon the recess. On placing his property in one of these recesses, each convict receives the ticket of that recess in lieu, and proceeds to labor. On his return from labor, he presents that ticket to an officer appointed to the duty, and receives back his own property in the condition in which he left it in the morning.—Prisoners without labor are thus far treated, with the exception of assignment to any particular burkundaz, in the same manner. When I arrived here, they were in the habit of proceeding, on the recommendation of the civil surgeon, to take exercise in one of the alleys, between the inner and outer walls of the jail, but without order and in noisy conversation. I adopted the plan of marching them out of their ward, and of making them take the same quantity of exercise, namely, for two hours in the morning, and one hour in the evening, in single file, and strict silence.—The female convicts have been a subject of some trouble and anxiety. When I joined the district they underwent little labor and had much freedom; they wore jewels and what clothes they pleased; and were neither shut up in their wards day or night. One had a parrot, another a shamah! But with the assistance of silence and solitary confinement, as the punishment of misconduct, and the adoption of a colored costume, I have subdued in some degree a system of insubordination; and with the exception of stealing ottah, which they are constantly discovered in concealing about every part of their persons, I have few offences among them which require punishment."—*Extract from report of Mr. T. P. Woodcock, Magistrate of Allahabad, circulated by Bengal Govt. March 1st*, 1845.

Daily reports to be furnished by jailor and native doctor.

2025. The jailor and native doctor are to furnish the magistrate on the opening of the court with daily reports in English (filled up by an English writer from similar statements kept in the vernacular by those officers) of the prisoners in jail and in the hospital in prescribed forms (Nos. 23 and 24 of appendix B), with any modifications that may be suggested by experience. C. O. No. 134 of vol. 1.

Orders for receiving and discharging prisoners.

2026. All orders for receiving prisoners into the jail, and for their final discharge, are to be signed by the magistrate or his assistant, and addressed to the jailor. Jail rules, sect 9, para. 6.

Prisoners to be counted periodically.

2027. The prisoners, on their being lodged in the wards in the evening, and on their being taken out in the morning, are to be counted over by the jailor or his deputy. Jail rules, sect. 9, para. 7.

Tools to be collected at night, and search to be made for weapons.

2028. At the time of locking up the prisoners, the working tools used by them are to be carefully collected and counted, and then deposited during the night in a place of safety without the jail. Sufficient search is also to be made, to prevent the concealment of any weapon or implement about the persons of the prisoners or in the jail, whereby the prisoners might injure one another, or be enabled to effect their escape. Jail rules, sect. 9, para. 8.

Jailor to visit every part of the jail, morning and evening.

2029. The jailor every morning and evening, at the opening and shutting up of the jail, is to visit personally every part of the jail, and carefully to inspect the windows, walls, doors, and gratings, in order to discover any attempt to cut the iron bars, or to undermine the walls of the jail. Jail rules, sect. 9, para. 9.

Keys of the wards.

2030. After the prisoners are locked up for the night, the keys of the wards are to be lodged with the jailor, if present; or if absent, with his deputy. Jail rules, sect. 9, para. 16.

Precautions against fire.

2031. In jails with a chappa roof the prisoners should not be allowed to have their hookas after they are shut up for the night. If a light is necessary, it should be placed under the immediate inspection of the sentry; and magistrates should use all practicable precautions, consistent with the health and reasonable comforts of the prisoners under their charge, to prevent the occurrence of fires. C. O. No. 258 of vol. 1.

Ventilation of wards at night.

2032. The practice of keeping the batten doors and shutters of the wards closed at night is a cruel and useless precaution against escape, whenever the doors and windows are secured with iron grating; and it is therefore prohibited. The prisoners should always have the means of opening or closing the shutters at will, and the latter should be pierced with open work in the upper planking, so as to admit fresh air into the wards, when the shutters are closed, during cold or rainy weather. *Bengal* Govt. C. O. February 25, 1846.

Certain prisoners need not be confined to the wards at night.

2033. As far as it is practicable, and consistent with safe custody, the close confinement of prisoners in their wards at night is to be restricted to those whose cases are under reference to the court of nizamut adawlut; to convicts under sentence of perpetual imprisonment; and to other persons of notorious bad character. A discretion may further be exercised by the magistrate, in the confinement of prisoners whose trials are under

reference to the nizamut adawlut, by exempting from the above restriction any prisoners whose close confinement may not appear necessary for their safe custody. C. O. No. 205 of vol. 1.

Precaution to be used in such cases.

2034. In all such cases the magistrate is to adopt such precautions as are necessary for ensuring the primary object of the safe custody of the prisoners. C. O. No. 145 of vol. 1.

Military guards exempted from a certain duty.

2035. A question having arisen as to whether the sepoys of government employed on duty at the jails should be required to guard the prisoners when taken out to ease themselves, the honorable the vice-president in council was pleased to determine, that the sepoys of the regular battalions should be exempted from the duty above mentioned. C. O. No. 69 of vol. 1.

No buildings to be erected within the jail, and prisoners not to be allowed the use of private dwellings.

2036. No buildings are to be erected within the walls or boundaries of a jail, but such as are authorized by government. No prisoner is to be allowed to possess, or have access to, any private dwelling in the vicinity of the jail; nor are the families of any one of the prisoners to be permitted to erect dwellings nearer to the jail than the magistrate may judge proper. Jail rules, sect. 9, para. 18.

Friends of prisoners not to be admitted.

2037. The wives and other female connections of the prisoners are not to be permitted to enter the jail. Jail rules, sect. 9, para. 20.

Prisoners not to keep shops.

2038. No prisoner is to be allowed to keep a shop in the jail, or its vicinity. Jail rules, sect. 9, para. 19.

Engagements to be made with moodies.

2039. The moodies who supply the convicts with food, are to execute an engagement, binding themselves to the performance of such conditions as the magistrate may consider proper, to prevent frauds and abuses. A copy of this engagement is to be fixed up in the guard-room, and in a conspicuous part of the jail; and the jailor is to see that these conditions are punctually fulfilled, or report to the magistrate any departure from them. The scales, weights, and measures used for articles supplied to the prisoners, are to be regularly inspected by the magistrate, at least once in every quarter, and as much oftener as he may judge proper. Jail rules, sect. 9, para. 21.

Magistrate to examine weights.

Guard for moodies.

2040. A sufficient guard is to be stationed with the moodies at the time of their supplying articles for the prisoners, for the protection of their property. Jail rules, sect. 9, para. 22.

Intoxicating liquors prohibited.

2041. Intoxicating liquors and drugs are expressly prohibited by the circular orders of the nizamut adawlut, under date the 23rd of April 1805,* from being admitted into the jail; and the officers of the jail are to be careful to enforce a strict observance of this prohibition. Jail rules, sect. 9, para. 23.

* *v. also para:* 2048.

Sale and barter, &c. prohibited.

2042. The prisoners are not to be permitted to give any money, or to give, sell, or exchange any property whatever to any person attached to the jail, or any public officer of whatever denomination. Jail rules, sect. 9, para. 24.

Prisoners committing suicide.

2043. In all cases of suicide among the prisoners in the jail, an inquest is to be held on the body, and an inquiry made into the circumstances of the case, with the view of ascertaining what cause may have led to the commission of the act; and the result of such inquiry is to be regularly reported to the court of circuit. C. O. No. 157 of vol. 1.

Over-crowded jail.

Magistrates how to proceed in such case.

2044. The magistrate is authorized and enjoined, whenever the number of prisoners is greater than can be conveniently accommodated in the proper jail, to hire without previous application to government any suitable buildings which may be procurable, or to accommodate a portion of the prisoners in tents or boats, or to incur such expense as may be necessary to provide in any other manner for the temporary shelter and safe custody of the prisoners. On such occasions, the magistrate is forthwith to report the arrangements he adopts for the information of government, explaining at the same time the cause of any sudden augmentation in the number of prisoners which has rendered such temporary arrangement necessary. C. O. No. 285 of vol. 1.

Responsibility of magistrate in such case.

2045. Serious consequences have, in some instances, been experienced from a want of proper attention, on the part of the magistrate, to the crowded state of the jails. A magistrate cannot be justified in crowding together a greater number of prisoners than the place of confinement will conveniently hold. His duty, in regard to prisoners in his charge, is to detain them in custody according to law; and every pain he inflicts on those persons, beyond that which is required by law, is illegal punishment. C. O. Nos. 114, and 165 of vol. 1; and No. 68 of vol. 2.

Session judge may authorize construction of kutcha buildings.

2046. In such case the session judge is at liberty to authorize the construction of kutcha buildings for the custody of the surplus prisoners; but those only, whose terms of imprisonment do not exceed six months, should be confined in such temporary buildings. A report is to be made to government on every such occasion. C. O. No. 74 of vol. 3.

Prisoners sleeping without the jail how to be secured; precautions against fire.

2047. Every evening at sun-set, the whole of the convicts on the roads, without distinction, are to be secured with a chain passed through the ring of their fetters, and fastened on the outside of the hut or tent with a padlock; but more than ten, or at the utmost twenty convicts are not to be secured with the same chain. The chain is to be made light, and put through the fetters whilst the prisoners are standing, in such a manner as not to prevent their moving together with facility on an alarm of fire. The hut or tent in which the prisoners are confined at night, should also have a convenient number of doors for their speedy removal in the event of fire; and every precaution should be taken to prevent so serious an accident, especially by using lanthorns to inclose any lamps that are kept burning or occasionally lighted during the night. The sentries at each relief are to examine the state of the locks and chains, and ascertain that they are not filed or loosened. Jail rules, sect. 9, paras. 33, and 34. C. O. No. 183 of vol. 1.

Classification of prisoners.

How to be classed in jail;

2048. Separate apartments in the jails are to be allotted for the following descriptions of prisoners:

Prisoners under sentence of death.

Prisoners sentenced to confinement by the sessions court or the nizamut adawlut [or by magistrate for heinous offences].

Prisoners committed to take their trial before the sessions court.

Prisoners sentenced to confinement by the magistrate for petty crimes or misdemeanors cognizable by him [*i. e.* under the powers first conferred on magistrates in this regulation].

And as the crimes proved or alleged against the second or third description of prisoners

must be of different degrees of atrocity, the magistrates are required to separate those found guilty or accused of heinous crimes from those convicted of or charged with crimes of less magnitude. They are likewise to separate the male from female prisoners, so as to prevent their having any communication with each other; and the rules for keeping apart the several descriptions of the former are applicable also to the latter. The magistrates are further enjoined to endeavour to prevent drunkenness, gaming, and other immoralities, being practised in the jail. *Beng.* Reg. IX. 1793, sect. 21. *Ced. Prov.* Reg. VI. 1803, sect. 21.

and at work

2049. A similar distinction should be observed in the employment on the public roads, or other public works, of prisoners sentenced by the magistrate and of those sentenced by the courts of session. C. O. No. 45 of vol. 1.

No intercourse to be permitted

2050. The different wards of the jail are to be appropriated, as far as may be practicable, to the particular descriptions of prisoners who are required to be kept separate under the above rules. The different classes of prisoners are on no account to be permitted any intercourse: and the magistrates are required to be particularly careful that persons in confinement for examination be never imprisoned in the same ward with prisoners under sentences of punishment. Jail rules, sect. 9, para. 15.

Security prisoners to be kept distinct from those convicted

2051. All prisoners detained in custody for security only, more especially such as are not confined as notorious robbers or on suspicion of robbery, are to be kept, as far as possible, distinct from prisoners convicted of specific offences. C. O. No. 116 of vol 1.

So, non-laboring from laboring prisoners

2052. All prisoners exempted, or declared entitled to exemption from labor on payment of a fine, under cl. 1, sect. 3, Reg. II. 1834, are to be kept separate, as far as practicable, both in and out of the jail, from convicts under sentence of labor in irons; and magistrates, and superintendents of prisoners, and their subordinate officers, are to be careful to prevent all communication between the two classes. Reg. II. 1834, sect. 3, cl. 2.

Particular attention to be paid to these rules

2053 The magistrate must at all times pay particular attention to the important object of separating the prisoners as directed above, and the session judge should see that it is observed. C. O. No. 98 of vol. 1.

Cleanliness.

Jail buildings

2054. The jail should be erected on a high and dry site, the floor to be well raised from the ground, with flues underneath, to keep the wards dry; and the walls of the wards should be lofty. Ventilation is a point of such vital importance, that every measure which can be adopted should be carried into effect; for, in proportion to the purity and airiness of the wards will be the health of the convicts. There should therefore be ventilators in the upper part of the wall, and spacious iron-barred openings on the ground floors, with an unconfined area on the outside. The privies should be exterior to the walls of the wards; and a corridor or passage should lead from the ward to the privy, with a wooden door at the entrance; and in the side walls of the privy should be open spaces secured with strong iron bars. A quantity of lime should be daily allowed for their purification. C. O. No. 145 of vol. 3.

Wards to be white-washed once in every quarter, or oftener.

2055. The military board have authorized the white-washing of jail wards once in every quarter if necessary, and oftener on emergencies, on a written application to that effect being addressed by the officer in charge of the jail to the executive engineer of the division. The officers having charge of jails will therefore be held responsible for their being kept in pure and cleanly condition; and prisoners should be prevented as far as possible from defiling the walls. C. O. Nos. 167, and 170 of vol. 3. Jail rules, sect. 7, para. 1.

Officer in charge to see that they are kept clean.

2056. As the most serious consequences may be experienced from want of due attention to cleanliness in the wards, the government will hold any magistrate highly reprehensible, who is inattentive to this important part of his public duty. C. O. No. 107 of vol. 1.

Daily ablution of prisoners.

2057. The most advantageous plan for providing means of daily ablution to the prisoners, is that of a good sized tank in the immediate neighbourhood of the jail, but outside the walls. The practice of bathing within the walls in the well from which water is drawn for drinking is open to objection, on account both of its impairing the quality of the water for drinking, and of rendering the inside of the jail wet and dirty. A tank should be dug 120 feet square and 10 feet deep, which would be large enough for the purpose, and would retain water throughout the year. But whenever difficulties still remain for procuring the means of ablution for the prisoners in the vicinity of the jail, it is almost always practicable to allow them these means during the interval of labor, which they enjoy in the middle of the day. C. O. No. 161 of vol. 3.

2058. As further connected with the health of the prisoners, the importance of providing means for their more frequent ablutions and greater personal cleanliness is worthy of notice, as exemplified in the salutary effect produced on the health of the Cawnpore convicts from the permission given them to bathe in a tank adjacent to the prison. The attention of the magistrates is directed to this subject. C. O. No. 88 of vol 3, para. 7.

Wells to be preserved from pollution.

2059. It is the particular duty of the jailor, and deputy jailor, and other officers of the jail, under such rules and orders as are prescribed by the magistrate, to prevent the water in the wells from being polluted. Jail rules, sect. 7, para. 3.

Clothes to be washed.

2060. The linen of the prisoners is to be regularly washed at stated periods. Jail rules, sect. 7, para. 2.

Hospital.

Sick prisoners to be sent to hospital.

2061. In the event of any convict complaining of sores or sickness, he is to be sent to the hospital, and put on the sick list, if really indisposed. Jail rules, sect. 7, para. 7.

Surgeon to see that they are removed.

2062. In the weekly inspection of the jail made by the surgeon of the station, he is to be careful to see that all prisoners who are actually sick, and require medical attendance, are removed immediately to the infirmary. Jail rules, sect. 7, para. 4.

Native doctor.

2063. The native doctor is to reside in the vicinity of the jail. Jail rules, sect. 7, para. 5.

Beds to be provided for hospital.

2064. A sufficient number of charpoys, or beds, of the common construction, are to be provided for the accommodation of the sick confined in the infirmary. Jail rules, sect. 7, para. 6.

Fetters may be taken off in hospital.

2065. Whenever the surgeon or native doctor may judge it necessary to take off a prisoner's fetters, in consequence of sores or illness, information is to be given to the jailor, and the fetters are to be taken off in his presence. The jailor is also to report the circumstances of the case to the magistrate. Jail rules, sect. 7, para. 8.

Convicts to be removed in cases of endemic cholera.

2066. When endemic cholera breaks out in the jail, the whole or a portion of the convicts are to be removed to a healthy spot in the district; which was found very beneficial in one instance when its attacks were very fatal in the insane hospital at Moorshedabad. C. O. No. 320 of vol. 1; and No. 145 of vol. 3.

Prisoners sick in sub-divisions.

2067. Whenever convenient modes of transport are available, and it appears proper to forward prisoners at the head-quarters of sub-divisions to the sudder stations for medical treatment in serious cases, the officers in charge are to make the necessary arrangements for carriage and escort. Prisoners whose sentences expire, whilst under treatment at the sudder hospitals, are to have the option of being immediately released or of remaining in hospital till cured.—Civil surgeons are to supply officers in charge of sub-divisions with cholera medicines and simple directions for using them. Resolution Govt. *Bengal*, May 20, 1846.

Quarterly report of surgeon to medical board.

2068. The civil surgeons are required to transmit quarterly to the medical board statements of the sick and of casualties, for such instructions as that board may see fit to issue to them, or for such report to government as circumstances appear to require: magistrates are to give every assistance to the surgeons. C. O. No. 132 of vol. 1.

Magistrate's writers to assist in preparing it.

2069. Magistrates are to give the assistance of the writers and mohurrirs on their establishments to the surgeons, to enable them to prepare the periodical reports required of them on the state of the hospitals and jail. C. O. No. 138 of vol. 1.

Explanation required when mortality exceeds one per cent.

2070. Whenever the mortality in the jail during any one month exceeds one per cent., the magistrate is to require the medical officer in charge of the jail to put on record, in the column of remarks of the monthly statement, his explanation of the cause of the excess, adding his own comments thereon; and in cases of very extraordinary mortality, he is to make a special report on the subject, for transmission to government through the session judge, who is to append his own observations on the subject. C. O. No. 187 of vol. 2; and No. 98 of vol. 3, magistrate's rules, para. 67.

SECTION II.

OF DIET AND CLOTHING.

Diet, Lower Provinces.

Rations to be given dry.

Two cooked meals.

Quality of food and care of it.

Supply of water.

Intermediate meals.

Money.

Musters of provisions.

Formation of messes.

Persons exempted from messing.

2071. (*Rule* I.) Every prisoner in the criminal jail is to be provided daily with dry or uncooked rations, and no money is to be paid to the prisoners on any account whatever. One cooked meal is to be supplied before and after labor, during the day, and in quantity and variety agreeably to the annexed table. The quality of the food is to be under unremitted supervision. Its preservation by the convict cooks is to be well attended to, and care taken that each individual receives his due share. Water if not at hand and procurable of good quality from wells, tanks, or river, should be brought by convicts, in gurrahs or earthen vessels, from the nearest spot where good water is procurable, to enable the working prisoners to quench their thirst with wholesome drink during the day. Prisoners are to be permitted to take with them the whole or any remaining portion of the morning's cooked meal, and to eat it when inclined during the period of labor. Raw or parched grain is prohibited.(a) (V.) Money is not on any account to be carried into the jail.(b) (VI.) No bartering on any account is to be allowed. The prisoners are to be allowed only what is laid down in the subjoined form. (VII.) The medical officer of the station is to approve of the musters of the provisions. The musters are to be sealed up in bottles or jars, and the contract to be reduced to writing. (VIII.) All the prisoners in the criminal jail, those under examination or committed to the sessions only excepted, are to be formed into messes. (IX.) Each mess is to consist of 20 men as the standard number, and one cook to be allowed for that number. [This number must vary according to circumstances, such as the sufficiency or otherwise of a number of men of the same caste to form a mess of 20, or other cause. The rule is not intended to be imperative, but to serve as a guide to the magistrate in distributing the prisoners into messes. In the formation of messes, the prisoners sentenced to labor should be kept separate from those sentenced to simple imprisonment. As the labor of the cooks does not equal that of the other convicts, well behaved convicts might be employed as cooks; and a selection should be made from the convicts sentenced to labor for cooking the food of the convicts sentenced to simple imprisonment; and such cooks should mess with the prisoners for whom they cook.] (X.) Lists of any prisoners of the classes that ought to mess, but who for any special cause are exempted from messing, are to be submitted quarterly to govern-

(a) In the opinion of the medical board, the midday tiffin of parched grain, formerly allowed, invited the accession of the very ailments which have caused the greatest mortality among the prisoners. C. O. No. 143 of vol. 3.

(b) "Money affords the prisoners the daily enjoyment of marketing, which would be a great alleviation of the punishment of any class of men, but peculiarly agreeable to the Indian character. As this enjoyment has no good moral effect upon the prisoner, and tends to make the penalty of his crime less efficacious than it ought to be, the indulgence appears in this view an unmixed evil." *Report of the Prison Discipline Committee, page* 31. It would be to no purpose to prevent marketing with money, if it were allowed to market with barter. C. O. No. 28 of vol. 3, para. 4.

DIET TABLE exhibiting the quantity and variety of Food which are necessary in the opinion of the Medical Board for the preservation of the health of Laboring and Non-laboring Convicts in Jail.

NON-LABORING CONVICTS.

	Morning Meal.							Evening Meal.								
	Rice.	Dall.	Vegetables.	Ghee.‡	Salt.	Mussalah per diem.	Total of each.	Rice.	Dall.	Vegetables.	Fish or Flesh.	Ghee.‡	Salt.	Mussalah per diem.	Total of each.	Grand total daily food.
	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.
Same Daily*	5	1	0	¼	¼	¼	6¾	6	2	1	0	¼	¼	¼	9¾	16½

WORKING CONVICTS.

	Morning Meal.							Evening Meal.								
	Rice.	Dall.	Vegetables.	Ghee.‡	Salt.	Mussalah per diem.	Total of each.	Rice.	Dall.	Vegetables.	Fish or Flesh.	Ghee ‡	Salt.	Mussalah per diem.	Total of each.	Grand total daily food.
	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.	Chittacks.
Monday,†...	5	2	0	¼	¼	¼	7¾	8	0	2	4	¼	¼	¼	14¾	22½
Tuesday, ...	5	2	0	¼	¼	¼	7¾	9	3	2	0	¼	¼	¼	14¾	22½

* Every day the above quantity the same.

† The above change on alternate days of the week, except on Sundays, when the laboring convicts will receive the same as the non-laboring convicts. Up-country prisoners should be allowed wheat flour instead of rice.

‡ If the native population of a district are in the habit of consuming mustard oil for cooking in preference to ghee, the magistrate is at liberty to substitute the same quantity of the former article, as is now dealt out of the latter under the above quoted diet table. C. O. Govt. Bengal, September 26, 1844.

A small quantity of tobacco should be allowed, and one and half seer of firewood, should the cooks require it.

ment with a column for remarks, in which the cause of exemption is to be briefly stated. [Exemption from messing should not be allowed for every trivial cause. The rule is that messes be formed, and the exceptions are to be as few as possible.*] (XI.) In the morning when the prisoners go to work, the mess cooks are to be employed in drawing water, cleaning the wards, washing the cooking utensils, receiving the rations from the contractor and making the necessary preparations for cooking: after this the cooks are to be employed in weeding in the jail. [This rule points out the mode of employing the cooks, who are not to be sent out with the working gangs. It is probable that objections on the score of caste, may be occasionally made by the cooks to cleaning the wards of the jail. These will of course meet with proper attention from the magistrates.] (XII.) The magistrates are to provide iron degchies or cooking pots, to be proportioned to the size of the messes.* (XIII.) The surgeon of the station is to see the prisoners at a meal at least once a week, his visits to be at irregular intervals and unannounced. (XIV.) A public register is to be kept by the surgeon of his visits, in which are to be entered any remarks he may consider necessary regarding the dieting of the prisoners. It is the duty of the session judge to see that this register is regularly kept up. (XV.) Contractors are to be allowed to build store-houses for their grain on any government ground near the jail, and provided the contract is duly performed one year by the individual erecting the same, one half of the cost of the store-house is to be defrayed by government. [The contract system for providing the food at a fixed rate all the year round should be had recourse to where it is practicable. The contract should be made with due regard to economy on the one hand, so as to protect the government against unnecessary expense, and on the other to the health of the prisoner, so as to ensure for him the full allowance fixed by government for his daily ration.] (XVI.) In addition to the standard ration, one pice [per week] is to be allowed for each prisoner for washing and shaving. (XVII.) All washing and shaving to be performed by contract. [The foregoing rules are to be considered applicable in their full extent to the male convicts only. The magistrate may enforce them as far as he is able in regard to female convicts also; but the small number of female prisoners in most of the jails will, in many instances, render the application of them impracticable.] C. O. Nos. 89, and 145 of vol. 3.

* *v. infra, para.* 2072.

Employment of mess cooks.

Cooking pots.

* *C. O. No.* 97 *of vol.* 3.

Surgeon's visits.

Contractors and contracts.

Washing and shaving.

Certain classes exempted from messing.

2072. Prisoners under examination, and prisoners sentenced to simple imprisonment without labor, are exempted from the ration and messing system; and are to receive a money allowance as formerly. C. O. Govt. *Bengal* No. 861, April 1, 1846.

Exchange of rupees into pice.

2073. The treasurer is not to be allowed to derive any profits from the exchange into pice of rupees disbursed for the diet allowance of prisoners. The pice, at whatever rate they are procurable, are to be charged for at the actual rate at which they are purchased. C. O. No. 270 of vol. 1.

Diet, Western Provinces.

Two cooked meals not allowed.

Daily ration.

2074. The scheme proposed by the medical board of allowing to prisoners two cooked meals daily, is rejected, as involving the occupation of too much time, and being incompatible with the due exertion of convict labor, and as being opposed to the habits of the laboring classes of whom the inmates of jails are for the most part composed. The daily ration is 12 chittacks (60 sicca weight), that is, each convict is to receive 10

chittacks of wheat flour[a], and 2 chittacks of dall daily, the latter to be replaced by an equivalent portion of vegetables, or rice, every second or third day, at the discretion of the magistrate. A conditional discretion is also given to magistrates, in communication with the civil surgeon, and with the assent of that officer, to increase this allowance to convicts subjected to hard work on the roads and exposed to the ardor of the sun, in any measure within the limit of one seer,—whenever there is good reason to conclude that failure of health and strength in such prisoners is connected with the insufficient quantity of food allowed them. The scale of diet within that limit should be varied according to the age, sex of, and amount of labor exacted from, the prisoners. This discretion is to be exercised with caution, and only in manifest cases of exigency, and its effect watched, that means may be afforded for judging whether improvement in the sanitary state of the prisoners to whom the indulgence is extended is the consequence. Whenever a magistrate acts on this discretion, he is to report having done so for the information of government, submitting at the same time copies of any correspondence with the medical officer or other public authority, which have passed, as well as of any opinion, that has been recorded on the subject of the adequacy, or otherwise, of the ration of ¾ of a seer daily. In addition to this ration a small quantity of salt, from ¼ to ½ a chittack, is to be served out to each prisoner daily as an indulgence, and to be so explained;—2 chittacks of ghee, ½ a chittack of red or black pepper, and ½ a chittack of tobacco are likewise to be distributed to each weekly. The daily allowance of wood is limited to 1 seer, but can be issued in even less quantities, according as experience shows the amount requisite for cooking the above quantity of food; and it is the duty of the officer in charge of the jail to see that no superfluous issue or subsequent waste occurs in this article of expenditure. The practice of allowing prisoners to barter portions of their ration of otta for other food is prohibited. The whole of the above articles are to be served out to the convicts, every other article of food or luxury being strictly excluded from the interior of the prison, where no bunnea or shop of any sort is to be located. Under this rule, properly enforced, no portion of the ration will of course be exchangeable, nor will any means be attainable to a convict for exchanging if so inclined. In no case is a departure from this rule to be allowed except under direct instructions from the civil surgeon, whose requisition must be made through the magistrate, and not in any way direct to the darogah himself. The hospital is also of course excepted from the operation of this general rule. Barbers and washermen are to be entertained on the part of government, and pice are not to be given to the prisoners for such purposes; but it is expected that the charge on this account should not exceed the aggregate amount of the allowance of a pice per week per man formerly paid. Magistrates are to encourage the system of messing as far as they discreetly can, without having recourse to measures of compulsion, which they are distinctly to

which may be increased if necessary

Such increase to be reported.

Salt.
Ghee.
Pepper.
Tobacco.
Wood.

Barter prohibited.

Rations how to be served out.

Shaving and washing

Messing system.

(a) "The terms of the contract are to supply per rupee 21 seers of white wheat (daoodee), which is the most expensive grain in the market, and rarely indulged in by natives. It comes from the northward in small quantities, and what my contractor calls white wheat, is a mixture of bad daoodee and good lullia. The last is the red wheat, equally nutritious, which comes in great quantities from the southward. It is usually consumed by natives of all ranks, and sells in the bazar for a seer, or a seer and a half below the price of white wheat. In wood alone, by adopting the use of convict labor in breaking it up, I shall be enabled to decrease the price nearly one half." —*Extract from report of Mr. T. P. Woodcock, Magistrate of Allahabad, circulated by Bengal Govt. March 1st*, 1845.

understand must not, until further orders, on any account be resorted to. Government are of opinion that this measure ought not to be compulsorily enforced, if there be any good ground to believe that it will offend or violate the religious prejudices of the prisoners, or injure the future prospects of those who are subjected to temporary imprisonment; while, on the other hand, should the real ground of opposition be repugnance to relinquish a practice which tends to lighten the irksomeness of confinement in jail, such an objection ought to be at once set aside. C. O. Nos. 88, 107, 111, and 168 of vol. 3.

Grinding wheat within the jail.

2075. The plan of purchasing the wheat needed for consumption through a trusty agent, and having it ground inside the jail by the prisoners themselves, is a valuable means of providing good nutritious diet in the place of adulterated food, and thus conducing to the improved health of the prisoners. But it must be borne in mind that trustworthy superintendence, and the unrelaxed personal exertions and scrutiny of the magisterial and medical authorities, are essential conditions of its success. C. O. No. 88 of vol. 3. para. 5.

Clothing.

Annual allowance of clothing.

2076. The blankets, or other clothes annually allowed to the prisoners, are to be served out at stated periods, and an account rendered of the old ones: care also is to be taken that the prisoners do not sell or dispose of them in any way. Jail rules, sect. 9, para. 25.

Blanket;—to be returned if good.

2077. All prisoners in confinement during the cold season are to be furnished with blankets; but prisoners confined for short periods, when discharged, are to be required to give them up. The returned blankets, unless rendered unfit for use, are to be re-issued to other prisoners in similar predicament. Blankets should invariably be issued on or before the 15th of October. C. O. No. 207 of vol. 2; and No. 93 of vol. 3.

Quantity and description of clothing.

2078. There is no published order specifying the quantity or description of clothing allowed to convicts. C. O. No. 169 of vol. 1 calls upon the magistrates to report whether mats and additional clothing are necessary for the prisoners during winter, but the result of the enquiries does not appear. In that order is given an opinion of the medical board opposing decidedly the use of mud floors for the wards, "which no care and attention can keep clean, or perhaps prevent from becoming sources of disease during certain seasons of the year, more especially when jails, as must occasionally happen, are crowded with prisoners."

Hajut, and indigent prisoners.

2079. The several magistrates throughout the lower and western provinces are authorized to furnish to the prisoners under examination, or committed for trial, and generally to all other prisoners who may from indigence be unable to supply themselves, the same quantity and description of clothing as is at present, or may hereafter be, authorized for those prisoners who are strictly denominated convicts. The magistrate is to exercise his discretion in furnishing such articles for the prisoners above alluded to, with reference to their real wants and necessities, whether at the time at which the prisoners are first brought in, or at any other periods during their confinement. The magistrates of the several stations within the western provinces are authorized to furnish annually an additional blanket. C. O. No. 209 of vol. 1.

SECTION III.

OF FETTERS AND OFFENCES.

Fetters.

Discretion to impose allowed to magistrate in certain cases.

2080. In all cases wherein no specific orders are issued, either by the nizamut adawlut or the sessions court, for the confinement of a prisoner with or without irons, the magistrate is at liberty to exercise his own discretion, and to direct the prisoner to be confined in fetters or not, according as the same appears to him proper or necessary for his safe custody, from the nature and circumstances of the case, considered with the prisoner's rank and former condition in life. C. O. No. 122 of vol. 1.

Cases of soldiers and camp followers.

2081. So, the magistrates may use their discretion in imposing fetters on native soldiers and camp-followers, who are made over to the civil authorities to undergo sentences of imprisonment adjudged against them by courts martial. C. O. No. 155 of vol. 3.

Prisoners who have bought exemption from labor.

2082. The rules of sect. 3, Reg. II. 1834 (which exempt prisoners from labor in certain cases on payment of a fine) do not interfere with the general discretion vested in magistrates of imposing fetters, or otherwise restraining refractory prisoners. Reg. II. 1834, sect. 4.

Prisoners confined for misdemeanors.

2083. The magistrates are not to impose fetters on persons confined for misdemeanors, except in the event of special necessity arising out of bad conduct of the offender during his imprisonment, which may make such restraint indispensable for his security: when, therefore, the magistrate places fetters under this restriction on any person convicted of misdemeanor, he is to record on his proceedings the grounds of the measure in each case. C. O. *Lower provinces*, Nos. 217 and 223; *Western provinces*, No. 224 of vol. 1.

Female prisoners.

2084. Female prisoners are not to be subjected to irons, except in cases where some special necessity exists for their use, as a precautionary measure, such as by way of security to prevent escape. C. O. No. 31 of vol 3.

Fetters to be made of a certain size and weight.

2085. The fetters generally used in the public jails are to be of a light and uniform construction; and no fetters exceeding the usual size and weight are to be put upon a prisoner without the special sanction of the magistrate. Jail rules, sect. 9, para. 10.

How to be made.

2086. The fetters are to consist of two bars connected by a moveable ring, and fastened to the legs by rings in such a manner as to allow sufficient freedom of motion; and those in ordinary use are not to exceed in weight one seer and a half, the seer being that of eighty siccas. The magistrate may cause fetters of less weight to be used whenever it appears safe and proper, with reference to a prisoner's age, size, strength, state of health, or to his general behaviour and character. This rule, however, is not meant to preclude the use of heavier fetters in cases of an attempt to escape, or disorderly conduct, for which the substitution of heavy fetters is expressly authorized by section 6, Reg. XIV. 1816. C. O. No. 207 of vol. 1.

Leather mozehs to be used.

2087. In order to protect the legs of the convicts from ulceration in consequence of the friction of the fetters, the magistrate is directed to cause every convict in the jail, confined in fetters, to wear leather gaiters or mozehs, extending a few inches above the ankle; and to enjoin the guards to be careful that the convicts do not take them off while out at their work. Care is to be taken that the rings of the fetters, placed on newly admitted convicts, are quite clean, and freed from all asperities arising from dirt or rust or carelessness in the original construction. If ulceration ensues at any time, the fetters should be immediately removed. Magistrates are at liberty to use their discretion in substituting chains for the long iron links generally in use; but it seems doubtful whether the security of the prisoners might not be diminished by the adoption of chains,—as the chains might be sooner cut through, unless the links were made of a thickness which would add materially to their weight. C. O. Nos. 38, and 95 of vol. 2.

Chains may be substituted for long links.

Handcuffs and neck-chains.

2088. Handcuffs and neck-chains may be used occasionally for prisoners evincing a refractory disposition; but except in cases of emergency, the necessity for them is to be previously reported for the orders of the magistrate. Jail rules, sect. 9, para. 11.

Stocks.

2089. The construction of substantial jails in each jurisdiction having rendered it unnecessary for the safe custody of prisoners in such jails that they should be confined in stocks, except in special cases of exigency, the ordinary use of stocks in the public jails is strictly prohibited. If at any time a magistrate, under special circumstances, considers the temporary use of stocks to be indispensably requisite for the custody of any of the prisoners under his charge, he is authorized to direct the same; but is immediately to transmit a full report of the case for the information and orders of the session judge. C. O. No. 183 of vol. 1.

Fetters not to be removed without order of magistrate.

2090. The jailor is not without a special order from the magistrate to take off the irons of any prisoner, except in case of any sudden emergency not admitting of the delay of a reference to the magistrate, or when prisoners are confined in the infirmary in too weak a state to bear the weight of their irons; and such cases, when they occur, are to be immediately reported to the magistrate. Jail rules, sect. 9, para. 13.

Jailor to examine fetters, and to take care that they are kept clean.

2091. The fetters of the prisoners are to be examined by the jailor or his deputy before they are put into the ward. And he is at the same time to enjoin on the convicts the necessity of keeping the rings clean, and to bring to the notice of the magistrate any instances of their disobeying this order. C. O. No. 95 of vol. 2. Jail rules, sect. 9, para. 12.

If fetters have been loosened.

2092. Any convict who is found to have loosened his irons, is to be fettered with handcuffs and neck-chains. Jail rules, sect. 9, para. 32.

Prisoners making disturbance.

2093. If any prisoner makes a riot and disturbance, or attempts to resist any of the guard, he is immediately to be put in chains and handcuffs, and the circumstances of the case are to be reported to the magistrate. Jail rules, sect. 9, para. 27.

Offences.

Magistrate is vested with authority to punish on a summary inquiry the following offences, viz.

2094. For the purpose of enabling the magistrate to maintain good order and discipline among the prisoners confined in the public jails, or other authorized places of confinement, and to enforce a due observance of the prescribed rules by the employment of the prisoners under their charge, they are vested with authority to punish, on a summary inquiry, the offences below specified. Reg. XIV. 1816, sect 4.

2095. A contumacious refusal to work by any prisoner sentenced to hard labor, or though not so sentenced who is subject to labor under any provision in the regulations, or under the discretion declared to be vested in the magistrate, by the orders of the court of nizamut adawlut, with respect to prisoners not exempted from labor by the sentences of the criminal courts, and not incapable of bodily labor from age, sickness, or other infirmity. Reg. XIV. 1816, sect. 5, cl. 1.

contumacious refusal to work;

2096. Wilful neglect and indolence in the performance of any prescribed work by a prisoner subject to labor, as described in the above clause, especially after previous admonition. Reg. XIV. 1816, sect. 5, cl. 2.

neglect and indolence;

2097. Wilful disobedience to any of the written rules for the observance of prisoners and internal economy of a public jail, which have been translated into the current language of the country, and suspended on a board within the jail for general information, as directed in the printed jail rules now in force. Reg. XIV. 1816, sect. 5, cl. 3.

disobedience to written rules suspended in the jail for general information;

2098. Refractory behaviour by prisoners; such as resistance to the jailor, guards, or other public officers, in the regular discharge of their proper functions; abusive language to any such officers; and generally, any culpable behaviour towards them which does not involve a serious act of criminality, such as cannot be duly punished by the magistrates, and should therefore be brought before the sessions court. Reg. XIV. 1816, sect. 5, cl. 4.

refractory behaviour;

2099. Any other instance of disorderly conduct by a prisoner; such as riot, insurrection, attempt to escape, taking off, or loosening or attempting to loosen by filing, cutting or otherwise, his own irons, or those of other prisoners, with a view to escape; conspiring with other prisoners for the purpose of insurrection or escape, or for any other criminal purpose; abusing or assaulting another prisoner; and generally any misconduct committed by a prisoner whilst in custody, which under the regulations in force, or from its aggravated nature, does not exceed the competency of the magistrate, and is therefore more properly cognizable by the sessions court. Reg. XIV. 1816, sect. 5, cl. 5.

disorderly conduct;

2100. Prisoners disabling themselves for labor are guilty of a breach of prison discipline, and as such are punishable by the magistrate under the general rules laid down for the management of public jails. Const. No. 1152.

and disabling themselves for labor.

2101. The powers vested in the magistrates for the punishment of the offences specified in the preceding section, which on a summary inquiry appear to have been committed by any of the prisoners under their charge, are declared to be as follows; due regard being had to the nature of the offence, the condition of the prisoner, and every other just consideration applicable to the case. Reg. XIV. 1816, sect. 6, cl. 1.

What punishment the magistrate may award.

2102. In cases of a contumacious refusal to work, or of wilful neglect and indolence in the performance of any prescribed work, within the first and second clause of section 5 of this regulation, the magistrate may cause the prisoner to be moderately corrected with a rattan [in certain cases, see below]; and in the instance of a prisoner's pertinaciously refusing to work, may likewise order his diet allowance to be reduced, in such degree as is consistent with his support, until he performs the work required from him. Reg. XIV. 1816, sect. 6, cl. 2.

for contumacious refusal to work, neglect, or indolence;

for disobedience to written rules, refractory, or disorderly conduct.

2103. The offences specified in the third, fourth, and fifth clauses of the preceding section are punishable, according to the nature and circumstances of the case, by stripes with a rattan, not exceeding the general limitation prescribed for this mode of punishment by a magistrate, viz. thirty rattans [in certain cases, see below], or by close and as far as practicable by solitary confinement; or when a prisoner has attempted to escape, by the substitution of heavy fetters for those in ordinary use, which are directed by the jail rules to be of a light and uniform construction; by the temporary addition of neck chains of a moderate weight, when the prisoner has been refractory or turbulent, or guilty of any act of violence; and in aggravated or emergent cases of this nature, by the further restraint of handcuffs, whilst such restraint, which is never to be imposed without necessity, appears to be requisite for the safeguard of the prisoner, or to prevent his doing mischief to others. Reg. XIV. 1816, sect. 6, cl. 3.

Laboring prisoners are still liable to corporal punishment;

2104. The provisions of cl. 1, sect. 2, Reg. II. 1834 (which rescinds the power to pass sentence of corporal punishment) do not exempt convicts sentenced to labor in irons from such moderate corporal punishment during their imprisonment, as is unavoidable for the maintenance of the discipline of the jails. Reg. II. 1834, sect. 6.

but it must be moderate, and only in unavoidable cases.

2105. Under the above provision, all offences which are opposed to the maintenance of discipline in the public jails (as those enumerated in sect. 5, Reg. XIV. 1816) are, when committed by convicts sentenced to labor in irons, punishable with stripes: but it is to be borne in mind, that such punishment must be moderate, and that it should be inflicted only when it is thought to be unavoidable for the maintenance of the discipline of the jails.(a) C. O. No. 14, November 13, 1846.

The infliction must be superintended by the magistrate, or his assistant.

2106. Corporal punishment is to be inflicted in the presence either of the magistrate or of his assistant; and the office of superintending the infliction of stripes is never to be deputed to a native ministerial officer. C. O. No. 59 of vol. 2.

Females are not liable to corporal punishment.

2107. No female is to be sentenced to corporal punishment by stripes. Reg XII. 1825, sect. 3.

Power of joint magistrate and assistant in such cases.

2108. The powers vested in magistrates by the above rules may, of course, be exercised by joint magistrates, and assistant magistrates, who are not stationed at the same place with the magistrates,* and who under the general regulations are invested with the authority of magistrates, with respect to prisoners under their immediate charge. The magistrates are further empowered to refer to their assistants at the sudder stations any cases within the provisions of this regulation; observing the rule prescribed in section 21, Reg. IX. 1807*, viz. that the order of reference direct whether the assistant is to submit his proceedings for the magistrate's decision, or to pass his own determination on the case referred to him. If the assistant be authorized to determine the case referred to him, he is empowered to pass the same order as might have been passed by the magistrate; but his decision is open to revision [on appeal†] by the magistrate, if the latter see cause for it, as

* *v. para* 578.

† *v. paras*: 1319 *and* 1320.

(a) This order rescinds C. O. No. 1 of vol. 3, which made it imperative that the corporal punishment should be inflicted at the moment, following so immediately on the offence, as to deter others by the force of example.

provided in the section above cited with respect to all judgments passed by the assistant to a magistrate, who is not vested with the full powers of magistrate. Reg. XIV. 1816, sect. 7.

Magistrate may commit if such punishment is inadequate.

2109. If in any case the magistrate considers the punishment he is authorized to inflict inadequate to the offence, he is to commit the prisoners to take their trial before the sessions court. Const. No. 85.

But he cannot both punish and commit

2110. Prisoners punished by the magistrate for breach of jail discipline cannot be committed to the sessions for the same offence, as any further punishment would be cumulative and therefore illegal. N. A. R. vol. 6, page 58.

Example of punishment.

2111. A prisoner confined in jail under sentence of 7 years' imprisonment without labor, was convicted of making an assault on the magistrate, while in the execution of his duty; and sentenced to receive 15 corahs, and to be imprisoned in handcuffs and fetters for the space of 7 years in addition to his former sentence, and to be kept to hard labor: but the magistrate was allowed to relax the restraint of handcuffs, whenever from the prisoner's behaviour he might consider it safe to do so. N. A. R. vol. 1, page 329.

Judge cannot inflict corporal punishment.

2112. It is not competent to a session judge to award stripes under sect. 6, Reg. II. 1834, that power being vested solely in the magistrate for the maintenance of discipline in the jail. Const. No. 1302.

Records to be kept of such cases

2113. It is not necessary to make a detailed record of the evidence, or of any part of the proceedings held in the summary inquiries authorized by this regulation; nor is it requisite to examine witnesses upon oath, except in cases of a serious nature, involving offences specifically provided for by the general rules in force for the administration of criminal justice. But a record is to be kept of every summary conviction and punishment; stating the name of the prisoner, the offence charged against him, the substance of the evidence and conviction; or the magistrate's personal view when the facts of the case have taken place within his view; and the punishment ordered with the date of the order; to be signed by the public officer by whom it is passed. The record so authenticated is to be kept ready for the inspection of the session judge on his visiting the jail, that a reference may be made to it in the event of any complaints being preferred by the prisoners. Should the session judge see cause to disapprove the order of a magistrate, or his assistant, in any instance, he is to notice the same to the magistrate, with any instructions which appear necessary, and are consistent with the regulations in force; or if the magistrate, or his assistant, appears in any instance to have been guilty of any gross neglect, or other misconduct, such as is required to be reported to the nizamut adawlut by sect. 63, Reg. IX. 1793 (*Ced. Prov.* sect. 30, Reg. VII. 1803)* or by any other regulation in force, the judge after calling for any requisite explanation is to report the same accordingly. Reg. XIV. 1816, sect. 8.

Duties of session judge.

* *v. para.* 501.

SECTION IV.

OF ESCAPE.

Register of escaped prisoners.

2114. The magistrate is to keep up, and regularly revise, in the vernacular language, a register of the names of convicts who have broken jail, or have otherwise effected their escape, in the form No. 1 of Appendix B. A copy of this register is to be forwarded on the 1st of January and the 1st of July in each year, to the superintendent of police Reg. III. 1812, sect. 9, cl. 1 and 2.

Inquest to be held on dead bodies of prisoners before removal

2115. To prevent the escape of prisoners from jail by feigning themselves dead, the magistrate is not to allow the removal of the bodies of prisoners who die in jail, until an inquest has been held on them by the native surgeon of the station, and such other persons as the magistrate appoints for the purpose, and the result of such inquest regularly reported. C. O. No. 26 of vol. 1.

And in cases of doubt the surgeon to inspect the body.

2116. In any case in which there appears to the native doctor, or other officers associated with him, to be the slightest doubt with regard to the actual death of a prisoner, the body is not to be removed until it has been examined by the civil surgeon himself. But surgeons are not to be required to inspect previously to their removal the bodies of all prisoners reported to have died in the jail. C. O. No. 204 of vol. 1.

Proceedings of magistrate to be submitted to judge

2117. All proceedings held by magistrates in regard to the escape of prisoners, as well as any proceedings respecting the conduct of the guards from whose custody the escape has been effected, are to be submitted for the inspection and orders of the session judge. Reg. XVII. 1816, sect. 14, cl. 1. Const. No. 1162.

Information of escape to be forwarded to superintendent of police

2118. The magistrates are to communicate to the superintendents of police of their respective divisions all instances of convicts breaking jail before the expiration of the period of their sentences, as well as every instance in which a prisoner in custody, during examination or commitment for trial, or under requisition of security for good behaviour, effects his escape, transmitting for the information of the superintendent of police a copy or extract of the proceedings holden by them on such occasion, together with information of the measures taken to re-apprehend the persons who have escaped; and stating at the same time whether in their opinion it is advisable to offer any reward for the re-apprehension of such persons, and if so, the amount of such reward. Reg. XVII. 1816, sect. 14, cl. 2.

Rules for offering rewards for re-apprehension

2119. The reports regarding the escape of prisoners to the session judges and the superintendents of police, required from magistrates by the above provisions are to be forwarded as heretofore [before the passing of Act. XVIII. 1844]. But the power of sanctioning rewards for the re-apprehension of escaped prisoners is transferred from the superintendents of police to the magistrates, who are authorized to proclaim rewards in such cases to the extent of 50 rupees. In cases where it is deemed expedient to offer a higher reward than the above, the magistrates are to report the circumstances direct to government for its sanction. In cases however in which heinous offenders have

escaped, or on occasions of emergency, the magistrates are to exercise a discretion, as heretofore, in offering a reward not exceeding 100 rupees, reporting the offer for the confirmation of government. Govt. *Bengal* C. O. No. 1072, Oct. 10, 1844, para. 9.

Notification in government gazette.

2120. In the *western provinces* magistrates are required, on the escape of a convict for whose re-apprehension a reward has been sanctioned of 100 rupees or upwards, to forward without delay a notification in prescribed form (No. 17 of Appendix C) for publication in the Agra government gazette, accompanying the same with a translation into Oordoo, to the government translator. C. O. No. 105 of vol. 3.

Magistrate and superintendent to adopt means for re-apprehension.

2121. The superintendent of police is to employ, in concert with the magistrate, the means which he considers best adapted to effect the re-apprehension of the offender. Reg. XVII. 1816, sect. 14, cl. 3.

Cases of escape cognizable by magistrate;—limit of punishment.

2122. The cases of convicts, or of prisoners ordered to be confined till they give security for good behaviour, who effect their escape while under sentence, or order of imprisonment, from a jail or other place of confinement, or from the custody of their guards, are cognizable by the magistrate; and upon conviction, the magistrate is empowered to sentence the offenders to corporal punishment not exceeding thirty stripes with a rattan, and (if sentenced to a limited period of imprisonment) to suffer such period of imprisonment beyond the unexpired term of their original sentence, as he judges proper, provided, however, that such additional imprisonment is in no case to exceed the period of two years. If the prisoner is in confinement under an order to find security for good behaviour, he may be sentenced to imprisonment for a specific term not exceeding two years. Reg. XII. 1818, sect. 5, cl. 1.

He may commute stripes to imprisonment;

2123. A magistrate may sentence a prisoner, convicted of escaping, to one year's imprisonment in lieu of stripes, in addition to the term he is authorized to award under the above provisions. Const. No. 1184.

but may still inflict stripes.

2124. But under the terms of the exception contained in sect. 6, Reg. II. 1834, the magistrate is not precluded by sect. 2 of that regulation from awarding stripes to persons convicted of any of the offences enumerated in these provisions. C. O. No. 14, November 13, 1846. (*This rescinds Const. No.* 993.)

No subsequent punishment can be added to that immediately inflicted for breach of jail discipline.

2125. Five convicts were tried for heading an insurrection in the Deegah penitentiary, in which the magistrate's authority was resisted, and his life placed in danger, and were convicted; but no punishment was awarded, because the magistrate had inflicted corporal punishment, previous to commitment, for breach of jail discipline; and any sentence would therefore have been a second punishment for one and the same offence. N. A. R. vol. 6, page 58.

So, prisoners escaping before trial.

2126. The cases of prisoners apprehended and detained in custody under examination on charges of a criminal nature, but not admitted to bail, who effect their escape from a jail or other place of confinement, or from the custody of their guards, are also cognizable by the magistrates; and such prisoners being duly convicted of the offence in question, are liable to a sentence of imprisonment, in no case exceeding six months. Reg. XII. 1818, sect. 5, cl. 2.

Example of escaping from hajut.

2127. A prisoner in the hajut-tujveez jail, convicted of making his escape from the Bareilly jail during an insurrection of the prisoners, in which several persons were killed and wounded, there being, however, no proof that he had been actively concerned in the insurrection, was sentenced to imprisonment for 5 years with hard labor. N. A. R. vol. 1, page 346.

So, prisoners escaping after sentence, and before issue of warrant.

2128. A prisoner was convicted and sentenced by the sessions court, but the issue of the warrant was stayed pending a reference regarding other prisoners in the same case to the nizamut adawlut: before orders were received on the reference, the prisoner made his escape from jail. Held that he was punishable by the magistrate as a convict under the above provisions. Const. No. 1246.

Sentence above 6 months to be reported to judge.

2129. When the magistrate sentences any person under these provisions to a longer period of imprisonment than six months, he is to report the case to the session judge; and the powers vested in the session judge, and the nizamut adawlut, with regard to the revision of sentences and orders passed by the magistrates, are applicable to all sentences and orders passed by the magistrate under this regulation. Reg. XII. 1818, sect. 6, cl. 1.

Same powers may be exercised by superintendent of police and joint magistrate.

2130. The superintendents of police, and officers vested with the powers of joint magistrate, are competent to exercise the same powers and functions as are entrusted to the magistrates by the above provisions. Reg. XII. 1818, sect. 6, cl. 2.

Offender to be committed to sessions, if escape is attended with severe personal injury to any person.

2131. The rules contained in the two preceding clauses [paras. 2122 and 2126] are not, however, to be considered applicable to the cases of convicts, or other prisoners, who in effecting their escape, or in attempting to effect their escape, are guilty of such a degree of violence towards their guards or other individuals, as may in its consequences involve the death, wounding, or severe personal injury of any person or persons. In all cases of that nature, it is the duty of the magistrate to commit the offender to take his trial before the sessions court. Reg. XII. 1818, sect. 5, cl. 3.

Punishment in such cases.

2132. Any persons brought to trial before the sessions court [under the above provision] are liable on conviction to such futher punishment, in addition to their former sentences, as may be adjudged against them, on consideration of the circumstances of the case, under the provisions contained in this regulation. Reg. LIII. 1803, sect. 9, cl. 1.

Magistrate cannot commit, unless escape is attended with violence.

2133. When the escape of a convict is not attended with violence, it is not competent to the magistrate to commit him to the sessions, although he may have been twice before convicted of that offence. The magistrate must himself dispose of the case. Const. No. 501.

Prisoners under sentence for escape may be exempted from labor on payment of fine.

2134. A prisoner sentenced to imprisonment for escaping from jail is entitled to exemption from labor, on payment of a fine, for the period of his confinement for that specific offence. Const. No. 1215.

Property of persons escaping pending appeal is not liable to forfeiture.

2135. A prisoner sentenced by the session judge to fine and imprisonment appealed to the nizamut adawlut, and was admitted to bail pending the appeal; he absconded and the bail was forfeited. Held that his property was not liable to forfeiture for evasion of process, under Reg. XI. 1796 and sect. 26, Reg. XX. 1817, which are applicable only to persons charged with a crime, but not convicted; but that he must be proceeded against as an absconded convict. Const. No. 1124.

From transportation.
When sentence is for life, the punishment for return is death.

2136. Any convict, under sentence of transportation for life, who has been transported to any place beyond sea, and escapes from such place of transportation, and returns without permission to Bengal, or to any part of the Company's territory under the presidency of Bengal, is on conviction thereof, to the satisfaction of the nizamut adawlut, and if no circumstances appear to that court to render such convict an object of mercy, to be adjudged to suffer death. Reg. LIII. 1803, sect. 9, cl. 2.

Futwa must be taken in such cases.

2137. A futwa must be taken on trial of convicts for escape under the above provisions. Const. No. 47.

Examples of punishment for returning from transportation.

2138. A convict under sentence of transportation for life made his escape from Prince of Wales's Island, and returned to Bengal. The court, not considering him to be a proper object of capital punishment (on what account does not appear) sentenced him to 39 korahs and to be again transported. N. A. R. vol. 1, page 231.

2139. A prisoner was convicted of making his escape from ship-board, while on his way to the place to which he had been sentenced to be transported. *Sentence:*—25 strokes of a rattan, and his former sentence to be considered in full force. N. A. R. vol. 3, page 168.

2140. A prisoner was convicted of returning from Prince of Wales's Island, where he was under sentence of transportation for life. The advanced age of the prisoner (90 years) was held to be a bar to capital or corporal punishment; and he was ordered to be transported again to the place whence he had returned, N. A. R. vol. 4, page 142.

Neglect of guards.
Punishment in cases of neglect, and of connivance;

2141. All guards of whatever description, having the custody of convicts who escape, and who appear on the magistrate's enquiry to have been guilty of wilful neglect, are to be immediately dismissed from the public service; and should any connivance or further criminality appear against them, are to be committed or held to bail, according to the circumstances of the case, for trial before the sessions court, that, on conviction, they may receive the punishment which the law directs. *Beng.* and *Ben.* Reg. II. 1799, sect. 6. *Ced. Prov.* Reg. VIII. 1803, sect. 23.

whether before or after conviction. Magistrate how to proceed in cases of military guards.

2142. The above provision is extended to guards in charge of prisoners who escape from custody, whether before or after conviction; but is not applicable to military guards from the provincial battalions (while such battalions continue subject to military law) or from any regular corps of the army. Whenever it appears to the magistrate that a guard, furnished from any corps subject to martial law, has been guilty of wilful neglect in guarding the prisoners under his charge, or of connivance at the escape, or the attempt to escape, of any prisoner, or of any other act of a criminal nature in the discharge of his duty, the magistrate is to cause the offender to be delivered over to the officer commanding the detachment to which he belongs with a charge in writing, that he may be tried and punished on conviction by a court martial. *Beng.* and *Ben.* Reg. XI. 1806, sect. 10, cl. 2. *Ced. Prov.* Reg. VIII. 1805, sect. 14, cl. 5.

How far magistrate may punish in cases of gross neglect or connivance.

2143. A magistrate may punish a burkundaz found guilty of gross neglect or connivance in the escape of a prisoner by fine and imprisonment under the provisions of sect. 19, Reg. IX. 1807, instead of committing the case to the sessions under the above provision; but if he thinks the sentence which he is thereby authorized to pass insufficient, he should proceed to commit the offender. Const. Nos. 206, and 1131.

Magistrate cannot impose fine of more than one month's pay;

2144. A magistrate is not authorized under cl. 5, sect. 5, Reg. VIII. 1809, to adjudge a burkundaz, from whose custody a prisoner has escaped, to pay a fine equal to 3 months' salary. The court ordered the restitution of what had been levied exceeding one month's salary. Const. No. 192.

nor impose labor;

2145. A magistrate is not authorized under Reg. XIV. 1816, or any other enactment, to sentence to hard labor a burkundaz found guilty merely of neglect of duty, as in conniving at the escape of a prisoner. Const. No. 712.

nor additional imprisonment in lieu of stripes.

2146. As burkundazes, chokeedars, &c., found guilty of neglect of duty, were not formerly liable to stripes in addition to imprisonment, the provisions of Reg. II. 1834, in prohibiting the infliction of stripes, do not authorize an addition to the period of imprisonment to which they were liable previous to the issue of that enactment. Const. No. 923.

Superintendent of police has no power in such cases.

2147. The superintendent of police cannot exercise any authority over the guards of prisoners effecting their escape. Const. No. 1162.

Magistrate cannot declare such officer ineligible for future employment.

2148. The above provisions do not empower the magistrate to declare by a public order that such officer should never again be employed in the zillah court in any capacity whatever. Const. No. 157.

SECTION V.

OF LABOR, AND EMPLOYMENT OF CONVICTS.

To be directed by government.

2149. The officers in direct charge of jails are to receive, through the session judges, from the government, all orders regarding the employment of convict labor. C. O. Govt. *Bengal*, No. 1072, October 10, 1844, para. 3.

Duties of magistrate in regard to employment of convicts.

2150. It is the bounden duty of the magistrates to enforce the due execution of the sentences passed on criminals, to take care that their labor is judiciously directed to objects of public benefit, and to prevent the periods of their confinement from being passed in ease and idleness. C. O. No. 158 of vol. 1.

No alteration can be made in sentence.

2151. Three prisoners, sentenced to imprisonment without irons, and to labor inside the jail, petitioned to be allowed to work on the roads, and consented to wear fetters. It was held by the nizamut adawlut, that the local officers were not competent to make any alteration in the sentence passed on a prisoner. Const. No. 1005.

All convicts may be employed on public works;

2152. The employment of prisoners in repairing the public roads is consistent with the Mahomedan law; and therefore all convicts sentenced to imprisonment [with labor] may be so employed, or in other similar public works, with an exception to any person who is incapable of labor from age, sickness, or other infirmity. C. O. No. 3 of vol. 1.

2153. The practice of working on the roads every description of prisoners capable of labor, indiscriminately, not excepting those confined for short periods and slight offences, is very objectionable: magistrates should be careful not to employ in that manner persons unfit to be so exposed from their previous habits, or the nature of their offence. C. O. No. 217 of vol. 1.

but a distinction is to be made.

2154. But in case any convict sentenced to imprisonment should, from his rank and situation of life or otherwise, appear an improper object to be employed on the public roads, or other similar works, the magistrate is to report the same, with the circumstances of the case, for the special orders of the nizamut adawlut. C. O. No. 8 of vol. 1.

Report to be made if any prisoner ought to be exempted from labor.

2155. There is no objection to session judges inserting an exemption from hard labor in the warrants issued by them to the magistrate, in cases wherein they may, on consideration of the rank or situation in life of any person sentenced to imprisonment, consider him to be an improper object of hard labor. C. O. No. 44 of vol. 1.

Judge passing sentence may exempt from labor.

2156. Experience having shown that the labor of the prisoners, confined in the several districts throughout the provinces, can be turned to very beneficial account in various duties connected with the repair and construction of public buildings, the magistrates generally should furnish to the superintendents of civil buildings, and to the officers acting under them, the aid of such number of convicts as can be conveniently spared from other urgent public duties, with a view to diminish the expence of repairing and constructing jails, hospitals, cutcherries, and bridges, in the immediate vicinity of the stations at which works may be sanctioned by government. C. O. No. 196 of vol. 1.

Prisoners may be usefully employed on public buildings;

2157. To enable the superintendent of civil buildings to judge of the degree in which the actual charges incurred in such buildings are reduced by the employment of convicts in each instance, the magistrates are to keep an accurate monthly account of the total number of convicts furnished by them for the duties in question. C. O. No. 196 of vol. 1.

in which case an account is to be kept.

2158. It is competent to government to vest superintendents of roads and other public works, and their assistants, who have the direction of the labor of convicts, with such powers as may from time to time be deemed necessary, to enable them to exert an efficient control over the convicts and the guards employed with them. Reg. IV. 1833.

Control over convicts may be vested in executive officer.

2159. Convicts placed under charge of executive officers are to be lodged and fed by them, but to be supplied with clothing by the magistrates in charge of the jails from which the convicts are detached. C. O. No. 127 of vol. 3.

Feeding, &c. of convicts in such case.

2160. Whenever it is necessary, under the orders of government, to collect any number of convicts together for the execution of public works, and such convicts cannot be supplied from the sudder station of the district in which their services are required, the superintendent of police is to make application to the government stating—the number of prisoners required,—the work on which it is proposed that they should be employed,—and the districts from which in their opinion they can be most conveniently supplied; and the government is to determine on the expediency of the removal of convicts, and to issue such instructions to the local magistrates as are deemed proper. Reg. XVII. 1816, sect. 18.

Rule when convicts are required to be supplied from other districts.

Special report to be made in such case.

2161. But government is averse to the employment of parties of convicts at a distance from the sudder station excepting under very particular circumstances. When therefore the employment of such parties is of so much public use as to render it expedient to detach them, a report is to be made to government. C. O. Sup. Pol. L. P. No. 1 of 1844.

Employment of prisoners beyond the limits of the jail.

2162. The government does not wish prisoners to be detached to work at a distance from the jail; as it is incompatible with proper prison discipline to keep the convicts in large gangs under native superintendence at a distance from the magistrate of the district. Improvement in prison discipline is an object of vast political importance, and far superior to the keeping up of roads; and it does not appear that the health of the prisoners can be better preserved on the roads than in the jails. The ferry fund committees cannot expect, in addition to the annual surplus funds, what would be equal to a further large money assignment in the shape of convict labor. Government does not object for the present to the employment of as many gangs outside the jails as are absolutely required for repairing station roads, whence the convicts can return to be shut up at night; but the great body of the prisoners, especially those sentenced for serious offences, are to be kept strictly employed within the premises,—on remunerative work, if possible,—but, at all events, employed. When this plan is once enforced, a great saving will be effected by discharging the whole or the greater portion of the ticca guards; and there is no doubt that energetic and persevering magistrates will in time devise means for repairing station roads from the profits of convict labor without sending a single prisoner to work outside the walls. C. O. Sup. Pol. L. P. No. 766, April 2, 1844.

How far convicts may be employed on private works.

2163. Magistrates are prohibited from employing convicts under their charge upon any private works whatever, and are enjoined on all occasions to employ them upon public roads or works, under a sufficient guard for their safe custody; except when during the rainy season they cannot be employed at a distance from the jails, and it is impracticable to employ the whole of them upon the public works, and when it would be expedient to employ a part of them on works combining public utility with private convenience which are undertaken by individuals. In such cases, the magistrate is to report to the session judge, and to state at the same time any work or works undertaken, or proposed to be undertaken, by individuals, which promise to be productive of public as well as private benefit, and on which a part of the convicts might be employed with security; and on consideration of such report, the judge is authorized to direct the employment of the convicts in the instances referred to, as may appear to them most advisable. C. O. Nos. 30, and 31 of vol. 1.

Judge to use discretion in such cases with caution:

2164. The session judge is to exercise this discretion with great caution and consideration, giving always a preference to public works over those of a mixed description. C. O. No. 196 of vol. 1, para 4.

and to report contravention of rule.

2165. The session judge is to bring under the notice of the magistrate, or if necessary of government, any instances in which he is of opinion that the convicts are employed, without competent authority, on works not strictly of a public nature. C. O. No. 196 of vol. 1, para. 7.

Not to be employed in station gardens.

2166. The employment of prisoners to clear away jungle in the private premises at the station cannot be allowed. The magistrate is at liberty however to employ prisoners in cutting down jungle by the road side or in such other places as the medical officer may recommend. The government is decidedly adverse to the employment of prisoners in agriculture or horticulture of any kind, the latter of which especially must be an agreeable occupation to many convicts, and by none can be felt as a severe punishment. The convicts are not therefore to be employed in station (branch agri-horticultural) gardens. C. O. Govt. *Bengal*, No. 1528, August 6, 1845.

Suggested rules for working.

2167. The nizamut adawlut circulated in December 1818 certain suggestions for the working and employment of prisoners on the roads, in which also are enumerated the different articles with which the gangs should be furnished. But as they were never made imperative rules, it seems unnecessary to recount them at length. C. O. No. 211 of vol. 1.

Employment in various manufactures;

2168. C. O. No. 240 of vol. 1 contains an account of the measures pursued by a magistrate for employing the convicts in various manufactures in a manner calculated to give them habits of industry, and to meet in some degree the expense attending their imprisonment.

in flour mills;

2169. C. O. No. 101 of vol. 3 contains an account of the introduction of mills worked by convicts for the purpose of grinding otta for their own consumption, which system is recommended (in C. O. Nos. 78 and 88 of vol. 3) as a valuable means of providing a good nutritious diet in the place of adulterated food, and as a good way of employing convicts within the jail, in districts in which any considerable number of the prisoners use such food.

in making paper.

2170. In C. O. No. 114 of vol. 3 is an account of the introduction of a paper manufactory into a jail, and of the process employed in the manufacture.

Jail darogah's commission on proceeds of manufactures.

2171. Officers in charge of jails (except Allipore jail) are authorised to pay to the jail darogahs at the close of each official year a commission of 35 per cent. on the profits of the manufactures carried on under their superintendence. Such payments are subject to the correction of the accountant to the government of Bengal; and the amount in each instance is to be reported to the secretary to government in the form No. 16 of Appendix G. This commission is strictly limited to the proceeds of articles actually sold, or to the bonâ fide value of those consumed for public purposes; and articles remaining in store at the close of the year are not to be included in the calculation. The magistrate is to obtain the sanction of government before expending the balance of 65 per cent. on objects of local utility. C. O. Govt. *Bengal*, No. 1058, May 20, 1846.

One half of produce of labor may be allowed to prisoners.

2172. The magistrates are authorized, when they deem it advisable, to allow to each prisoner, as an incitement to industry, one half of the monthly produce of his monthly labor, over and above all allowances he would otherwise receive. C. O. No. 252 of vol. 1.

Guarding of convicts employed on the roads.

2173. Convicts at work on the roads, or in other public places out of jail, are to be employed, as far as possible, collectively, and never under the custody of a single guard; but are to be guarded by as many burkundazes as can be spared from other duties for the purpose. C. O. No. 18 of vol. 1.

Not to be allowed to communicate with other persons.

2174. No prisoners are to be permitted to stop in a bazar or village. The prisoners are not to be permitted to have any intercourse with their female connections, or to receive any articles from them without the knowledge of the officer commanding the guard. The sepoys and burkundazes in charge of the prisoners, either at work or elsewhere, are to be enjoined to prevent, as much as possible, any person holding communication with the prisoners; and are always to report to the jailor when any improper or suspicious communication appears to have taken place, that the party may undergo a strict examination before his being shut up on re-admission into jail for the night. Jail rules, sect. 4, paras. 8, 9, and 10.

Certain prisoners to be separated during work.

2175. Persons sentenced to imprisonment by the magistrates are to be employed separately from prisoners convicted of crimes before the sessions courts, when at work on the public roads or other public works. C. O. No. 45 of vol. 1.

And distinction to be made as to public and private labor.

2176. As to the mode of employment during imprisonment, in all cases of misdemeanor, it is to be assumed as the principle on which the magistrates are to act, that in these cases, the reformation of the offender is the principal end in view, and not public exposure by way of example; the latter object being reserved for higher crimes. Accordingly, in each class of cases, a distinction should be made as to private and public labor: the private labor for cases of misdemeanor and minor offences, to consist of beating soorkee, making baskets, mats, bags, or any thing of easy fabric, in the jail or in some shed near it; while labor on the public roads, or on public works, is reserved for offences of more serious cast. It is not intended by these instructions, to lay down precise rules as to the mode of employment to be pursued by the respective magistrates; but to state the general principle of private labor, which it is desirable that they should adopt, leaving them to follow it up in such mode as their discretion, under local circumstances, may point out as practicable. It rests with the magistrates, in convictions before themselves for petty theft, to direct private or public labor as the circumstances may seem to require; adopting the first, however, in all practicable cases. C. O. No. 238 of vol. 1.

But discretion allowed to magistrate.

2177. As there may be districts in which a strict adherence to the above suggestions is not advisable, the several magistrates are to exercise a sound discretion in awarding either description of labor, public or private, to the prisoners under their charge: and may employ them in manufactures or on the roads, as may seem most applicable to each case, without reference to the nature of the offence of which they have been convicted, provided their sentence has not specified any particular species of labor. C. O. No. 255 of vol. 1.

Rules for hours of labor:

2178. All the prisoners liable to hard labor are to be brought out of the jail by sunrise; and they are uniformly to be conducted back to the jail soon enough to allow of their taking their evening meal, and of being mustered, searched, and properly secured, before it is dark. Jail rules, sect. 4, para. 11.

which is to be suited to the strength of the convicts.

2179. Labor is to be exacted with due discrimination in regard to the seasons of the year and to the strength of the convicts. It is to be moderated or entirely remitted during an unusual degree of sickness. One hour's rest from labor is to be allowed in the middle of the day. On the first symptoms of illness of the convict during working hours, he

should be sent immediately to the hospital. A convalescent period is to be allowed, at the discretion of the medical officer, to all convicts discharged from hospital. Some lighter labor than working on the roads should be devised for prisoners 60 years of age and upwards. Frequent inspection of the prisoners is to be made by the medical officer previous to their leaving jail, with a view of detecting prisoners laboring under illness, and of pointing out those incapable of much bodily exertion. C. O. *Lower Provinces*, No. 145 of vol. 3.

2180. The attention of the magistrate is particularly urged to the practice of meridian intermission of labor, of longer or shorter duration according to the season of the year; and to the system of classifying prisoners according to physical strength, a distinction being maintained between the kind of work assigned to the weak and aged, and that given to the robust. These precautions are closely connected with the internal economy and discipline of the jails, and well calculated to promote the health of those confined within their precincts. The magistrates are expected to communicate freely with the medical officers in charge of jails on these points, and to exercise a sound discretion in allowing a cessation from labor during the heat of the day, and in proportioning the amount and description of labor to the physical ability of those from whom it is exacted. C. O. *Western Provinces*, No. 168 of vol. 3.

Not to be employed on sundays; and native holidays may be allowed.

2181. Except on urgent occasions, when the convicts engaged in the execution of any particular work cannot be dispensed with, they are not to be employed on sundays; and at all events, a part of every sunday is invariably to be allowed to them and to their guards for the purpose of cleanliness. The magistrates are at the same time to be careful that this indulgence is not abused by any misbehaviour, and are to adopt such measures as appear best calculated to secure the due attainment of the object intended. It is also at the discretion of the magistrate to authorize an intermission of labor at the principal Mahomedan and Hindoo festivals, as far as appears indispensably necessary to enable the convicts to perform their religious ceremonies respectively, but not to any further extent than may be requisite for this purpose. C. O. No. 183 of vol. 1.

Allipore Jail.

Persons sentenced to imprisonment in, not to be worked on the roads before removal.

2182. Convicts under sentence of imprisonment for life in the Allipore jail, are not to be sent to work on the roads while they remain in the zillahs; but are to be kept in strict custody in the jails, until they are removed to the place of their ultimate destination. C. O. No. 117 of vol. 2.

Persons imprisoned for life not to leave the jail;

2183. Persons sentenced to imprisonment for life in Allipore jail are on no account to be permitted to quit the area attached to the jail, except in cases in which sickness or accidents require that they should be taken to the hospital attached to the jail, and they are to be uniformly re-lodged within the jail whenever their health admits. Reg. XIV. 1811, sect. 2, cl. 3.

but are to be employed in manufactures therein;

2184. Persons sentenced to imprisonment for life in the Allipore jail are to be employed in the manufacture of articles for which a constant demand exists at the presidency, or in such other labor as the superintendent of the jail directs, subject to any instructions with which he may be at any time furnished by government. Reg. XIV. 1811, sect. 2, cl. 4.

but the superintendent may employ them on the roads.

2185. But the superintendent may employ convicts sentenced to imprisonment for life in that jail, and subject to hard labor, in the repair of the public roads, or in other public works beyond the area of the jail. He is to be careful to exercise this authority with due regard to the character and circumstances of the convicts, and to adopt suitable precautions to guard against their escape. Reg. IV. 1823, sect. 7.

SECTION VI.

OF JAIL OFFICERS.

Magistrate may appoint and remove officers,

2186. The magistrate is empowered to appoint fit persons to the situation of jailors and other subordinate officers of the criminal jail, and to remove such officers for misconduct, incapacity, or other sufficient cause, without reference to other authority. Reg. XVII. 1816, sect. 7, cl. 2.

of both civil and criminal jails.

2187. As the magistrate is responsible for the safe custody of the dewanny as well as the foujdaree prisoners, the appointment and removal of native officers attached to both jails is vested exclusively in him. Const. No. 442.

Grounds of removal to be recorded, and proper persons selected.

2188. The magistrate is to record upon his proceedings the grounds upon which any such officers are removed by him; and to select proper persons to fill all vacancies in the situations of such officers; and to continue in office the persons appointed, whether by himself or by his predecessors, whilst they discharge the duties assigned to them with diligence and integrity. Reg. XVII. 1816, sect. 7, cl. 3.

Report of appointment to be made to judge.

2189. The magistrate is to report to the session judge whenever he appoints a jailor, specifying his name, age, past employments, character, and qualifications. Reg. XVII. 1816, sect. 7, cl. 4.

Officers dismissed may petition the judge;

2190. In the event of a jailor deeming himself aggrieved by any order passed by a magistrate with respect to his dismission from office, he is at liberty to present a petition to the session judge, setting forth the circumstances of his case and grounds of complaint. Reg. XVII. 1816, sect. 7, cl. 5.

who is to call for proceedings, if he thinks proper.

2191. On the perusal of such petition the judge may, if he deems proper, require the magistrate to submit the proceedings holden on the case for his inspection accompanied by any explanation, in the English language, which he is desirous to offer. Reg. XVII. 1816, sect. 7, cl. 6.

Orders of magistrate final; but judge may submit proceedings to government.

2192. Orders of magistrates for the dismissal of officers of the jail establishment are final: but if, after consideration of the papers furnished, the session judge is of opinion that the powers, vested in the magistrate by these provisions, have been perverted, he is to submit the proceedings to government. Reg. XVII. 1816, sect. 7, cl. 7. C. O. Govt. *Bengal*, No. 1072, October 10, 1844, para. 8.

2193. The above provisions do not preclude the session judge or the nizamut adawlut from ordering the removal of any jail officer, who is convicted of a criminal offence declared punishable by dismission from office, or, though not so expressly declared, if the conduct of such native officer appears, from any proceeding before the sessions court or the nizamut adawlut, to be such as to require his removal from the public situation held by him. Reg. XVII. 1816, sect. 7, cl. 8.

Session judge or nizamut adawlut may order dismissal in certain cases.

2194. The magistrates are to be careful to prevent any maltreatment of prisoners by any of the native officers attached to their respective jails, or in charge of prisoners employed on the public roads. All complaints of prisoners against the officers having charge of them are to be immediately inquired into by the magistrates; and if proved to be well founded, the offenders are to be liable to immediate dismission; besides a fine not exceeding one month's salary, or imprisonment not exceeding six months. Reg. XIV. 1816, sect. 9, cl. 2.

Magistrate to prevent mal-treatment of prisoners by native officers.

2195. It is not of course intended that the foregoing rule should be considered applicable to any military guards, sepoys, or officers, or to persons of any denomination, who are subject to a military tribunal. In the event of any such persons being guilty of a neglect of duty, or other misconduct involving an offence cognizable by a court-martial, whilst employed in the custody of prisoners, the magistrate is to continue to observe the rule prescribed for such cases in sect. 10, Reg. XI. 1806.* Reg. XIV. 1816, sect. 9, cl. 3.

Military guards how to be punished.

* *v paras.* 208 *and* 209.

2196. Jailors are included in the list of public servants entitled, under the existing pension rules, to a superannuation pension. C. O. No. 179 of vol. 3.

Jailors are entitled to pension.

2197. Native doctors attached to the jail fall within the general description of subordinate officers attached to jails whom the magistrate may appoint and remove under the above provisions. Const. No. 258.

Native doctors come within the above provisions;

2198. Recommendations made by the magistrates touching the emoluments of the subordinate medical officers, are to be submitted, through the regular channel, to the medical board direct. C. O. *Western Provinces*, No. 63 of vol. 3.

their emoluments.

SECTION VII.

OF CUSTODY OF PRISONERS UNDER EXAMINATION.

2199. On the apprehension of prisoners at the sudder station, as well as on the arrival of prisoners sent in by the police darogahs, they are to be delivered over to the jailor with a chalan, under the signature of the magistrate or his assistant, specifying their names, the charge or information on which they have been apprehended, in what apartment of the jail, or with what description of prisoners they are to be confined, and whether they are to be secured with ropes or fetters. Jail rules, sect. 2, para. 3.

Prisoners to be sent to the jailor with a chalan.

2200. The jailor is to carry the terms of the chalan into execution, and is to take every possible precaution for preventing the prisoners under examination from associating and conversing with the convicts in the jail. Jail rules, sect. 2, para. 4.

Jailor to execute the terms of the chalan.

To be confined in a distinct apartment.

2201. All prisoners detained under examination are to be confined in a distinct apartment, or apartments, of the regular jail. Jail rules, sect. 2, para. 2.

Not to be kept in nazir's house.

2202. Prisoners are not to be kept in the nazir's house, until they find security, or until orders are passed upon the report of the darogah accompanying such as are sent in by the police. C. O. No. 47 of vol. 2.

To be kept separate from all others, if they have confessed in the mofussil.

2203. When accused persons, who have confessed in the mofussil, are forwarded by the police, they should not be allowed to mix with the prisoners in the common jail previous to their examination by the magistrate, lest they should be put upon their guard by them, and consequently decline to make any confession or discovery. On the other hand, the magistrate must be watchful that prisoners are not subjected in the jail, or other places of confinement, to any continuance of the improper means which may have been used by the police to extort confessions. C. O. No. 73 of vol. 1.

Fetters to be imposed only in heinous cases;

2204. As the only object of keeping in custody prisoners committed to the sessions is to secure their appearance at the time of trial, the magistrate is not to confine in fetters any such person who is charged with a bailable offence, and committed to prison from inability to find bail; or who, though not admitted to bail, is not charged with an heinous offence, such as from the circumstances and nature of the case, considered with the prisoner's condition of life, appears to render the use of irons indispensably necessary for his secure custody. C. O. No. 40 of vol. 1.

and not always in such cases;

2205. Under this rule prisoners committed on a charge of burglary may be confined in irons, as that offence is of a heinous nature; but the magistrate should use his discretion in such cases, according to the nature of the offence charged, and the character and circumstances of the individual prisoner, having in view merely to ensure his safe custody. C. O. Nos. 206, and 210 of vol. 1.

only in special cases.

2206. This measure, however, should be resorted to only in extreme cases, or where the prisoner is of a character so dangerous as to render the imposition of fetters absolutely necessary to his safe custody; and the magistrate is always to record on his proceedings of commitment his reasons for resorting to the measure, whenever he deems it necessary to place fetters on a prisoner previous to his trial. C. O. No. 32 of vol. 2.

Rule when prisoners are required in the magistrate's court.

2207. Whenever the attendance of any prisoners in the jail is required at the magistrate's cutcherry, the nazir is to send a list of their names, under his signature, to the jailor; and the jailor is to deliver the prisoners mentioned in the list to the charge of the officer sent for them, with a sufficient guard for their security. Jail rules, sect. 2, para. 5.

SECTION VIII.

WARRANTS FOR EXECUTION OF SENTENCE.

Warrant to be issued for release.

2208. A warrant of release should always be issued by the session judge on the acquittal of a prisoner, even though he has been convicted in another case, in order to preserve regularity in the office of the magistrate. N. A. R. vol. 2, page 10.

Judge to issue within 2 days after sentence.

2209. In all cases in which the judge passes final sentence without reference, the warrant to the magistrate for carrying the sentence into execution should be issued within two days from the close of the proceedings C. O. No. 119 of vol. 2.

All warrants to be addressed to the magistrate.

2210. All warrants for the execution of sentences should be addressed to the chief magisterial authority of the district, whether he is denominated magistrate, or joint magistrate, although the prisoners were committed for trial by subordinate officers exercising the full powers of magistrate. Const. No. 847.

Period of imprisonment to be noted in words and figures.

2211. The session judge is invariably to insert in the warrants in words as well as in figures the period of imprisonment, to which the prisoners thereby affected are sentenced; and at the same time to note on the margin of the warrant the prisoner's name, and the period of imprisonment in figures. C. O. No. 67 of vol. 2.

Date of sentence by nizamut adawlut to be noted.

2212. The session judge is invariably to specify the date of the sentence, passed by the nizamut adawlut, in the warrant issued by him for carrying it into execution. C. O. No. 151 of vol. 1.

If prisoner has absconded.

2213. When a prisoner has not been apprehended until some time after the date of his sentence, the magistrate is to make a special report to the nizamut adawlut, through the session judge, for their orders regarding the date from which the period of imprisonment is to be reckoned. N. A. R. vol. 3, page 49.

All warrants to be returned after execution.

2214. All warrants are to be returned to the court by which they were issued, after the complete execution of the sentence contained in them, with an endorsement certifying the manner in which the sentence has been carried into execution. In the case of a sentence both for corporal punishment(a) and imprisonment, the carrying into execution of the former part of the sentence should be endorsed on the warrant at the time of inflicting the punishment; but the magistrate is to retain the warrant until the expiration of the term of imprisonment: or to return it duly endorsed, should the prisoner die during the course of the term: or, in the event of his being removed to another zillah, the warrant is to be transmitted to the magistrate of the zillah to whom the prisoner is sent, with information that he is to return it duly endorsed on the expiration of the sentence or death of the prisoner. C. O. No. 34 of vol. 1.

How to be endorsed.

(a) Corporal punishment can now be inflicted only by a magistrate; and no other punishment can be superadded. But this rule is applicable to cases in which any other punishment, as tusheer, is included in the same sentence with a term of imprisonment.

Warrants of magistrate to be endorsed by jailor.

2215. Warrants of magistrates, joint magistrates, and assistants, are to be returned by the jailor when completely executed, with an endorsement to that effect on the reverse. C. O. No. 167 of vol. 2.

If prisoners die under transit.

2216. When prisoners die in course of transit from one district to another, or after arrival, the magistrate to whose district the prisoners are sent, on obtaining information thereof, is invariably to forward the warrant, sent with the individuals so deceasing, to the magistrate from whose district they came, enclosed with a certificate of death under his official seal and signature. C. O. No. 40 of vol. 3.

Forms of warrants:

2217. Forms of warrants are not prescribed by any circular order; but 7 forms of those in use are given in Appendix A, Nos. 34 to 40.

when labor is commutable to fine.

2218. When a sentence of fine in lieu of labor is passed under the provisions of sect. 3, Reg. II. 1834, the following form is to be adopted: "—— and sentenced to be imprisoned without irons for — years from this date, and to pay a fine of rupees — on or before the — day of —, or in default of payment to labor until the fine is paid, or the term of sentence expires." C. O. No. 146 of vol. 2.

SECTION IX.

OF EXECUTION OF SENTENCE.

Capital punishment.

Copy of sentence to be sent to magistrate.

2219. In all cases of capital punishment, copies of the sentences of the court of nizamut adawlut should be transmitted to the magistrate, together with the warrants for the execution of the prisoners. C. O. No. 32 of vol. 1.

Discretion allowed to magistrate as to time.

2220. In issuing warrants for capital sentences to the magistrates, a discretion should be left with them, in regard to the period for carrying such sentences into execution, in the warrants, specifying on or before a certain date. C. O. No. 103 of vol. 1.

But judge to report extraordinary delay.

2221. The session judge is invariably to report, for the orders of the nizamut adawlut, any extraordinary delay which occurs in carrying into execution a sentence of capital punishment. C. O. No. 286 of vol. 1.

Warrant to be returned if execution is delayed beyond the specified time.

2222. Whenever a magistrate has occasion to postpone the execution of a convict sentenced to suffer death beyond the period fixed in the original warrant, he must return such warrant to the session judge with a report of the circumstances of the case; and wait the receipt of a second warrant, or an order endorsed upon the first by the session judge, containing a definite date for carrying the postponed sentence into effect. C. O. No. 305 of vol. 1.

Discretion allowed to magistrate as to place.

2223. As the execution of criminals who are sentenced to suffer death (especially of sirdar dacoits, and other notorious robbers) may in some instances produce a deeper impression, and operate more powerfully as an example, by its taking place at or near to the spot where the crime has been committed, instead of the usual mode of execution at

the magistrate's place of residence, the several magistrates are at liberty in all instances to execute criminals sentenced to suffer death at such place within their respective jurisdictions as appears to them most expedient. In exercising the discretion thus vested in the magistrates, they are of course to be careful, whenever a convict is sent to any distance from the jail for execution, to appoint a sufficient guard for his safe custody; together with a responsible officer of the court, who jointly with the commanding officer of the guard and the local police officers, after attending the execution of the prisoner, should make a written report of the due execution of the sentence. The magistrates are to be careful to prevent any exactions from the inhabitants of the country, at the place of execution: and, with a view to prevent offence against the prejudices of the natives, the court direct that no criminal be executed within any town, village, or other inhabited place; or so near to the house of any individual as to afford just ground of complaint. C. O. No. 65 of vol. 1.

Precaution to be used by him.

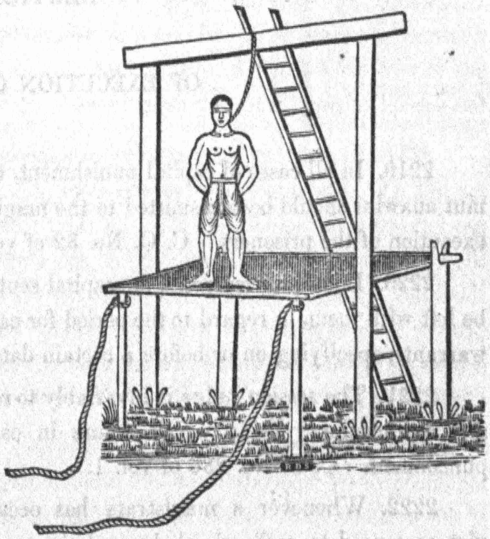
2224. The bodies of criminals are not to be exposed on gibbets after execution, but are to be burnt or interred, unless claimed by the relations or friends. It is discretionary with the magistrate to dispose of the body in either of these modes most consonant with the customs of the tribe and caste of the sufferer. C. O. No. 140 of vol. 2.

Disposal of bodies, which are never to be gibbeted.

2225. Malefactors are to be executed on a drop according to the pattern prescribed by the nizamut adawlut; its construction and use are to be clearly explained, lest any misapprehension should be the cause of unnecessary and protracted suffering. The practice of hamstringing criminals, whether before or after execution, is prohibited; and magistrates are to be careful that all other practices are abstained from, which tend to diminish the solemnity of the proceeding, and the awe, which it is the primary object of the punishment to create in the minds of all who witness it. C. O. No. 53 of vol. 2.

Pattern of drop to be used.

Certain practices prohibited.



2226. So, the practice of allowing music, money, and other indulgences to persons led to execution is interdicted; but if the criminal is not possessed of decent clothes, he is to be invariably supplied with a suit and a cap. C. O. Nos. 177, and 182 of vol. 3.

Clothes to be supplied if necessary.

2227. As it is impossible to render the printed form of warrant applicable to every case of male and female convicts, the session judge is to be careful in each instance to make such alterations as may be necessary, according to the terms of the sentence, to which the warrant should of course conform as exactly as possible. C. O. No. 180 of vol. 1.

Form of warrant to be adapted to each individual case.

2228. Warrants for capital punishment, when duly executed, are to be endorsed in the following form: "I hereby certify that the sentence of death passed on A. B. son of

Form of endorsement of warrant after execution.

C. D. has been duly executed, and that the said A. B. son of C. D. was accordingly hung by the neck till he was dead, at the town of Sylhet, on Saturday, the 20th day of March 1847. I further certify that the body of the said A. B. son of C. D. was afterwards burnt [or buried, or given to his relations or friends, as the case may be]. Given under my hand and the official seal of this court, this 25th day of March 1847. *(Signed)* J. S. Magistrate." C. O. Nos. 260 and 166 of vol. 1.

Magistrate to certify that no accident has occurred; or the cause of such.

2229. In the generality of accidents proceeding from the breaking of ropes made use of to hang criminals, the contingency is the result of a want of management and due care and foresight on the part of the officers charged with the execution of the sentence, to whom it cannot but be regarded as exceedingly discreditable. Its effect is equally injurious and to be deprecated, whether the accession of physical suffering caused thereby, or the disturbance of the solemn impression meant to be conveyed and of the operation of the spectacle as a moral example, be considered. Each certification of the execution of a capital sentence is therefore to include an announcement of no accident, error, or other misadventure having occurred; any occasion of the occurrence of such contingency, with a statement of its cause, of the party to whose fault it was owing, and of the steps taken in consequence, is to be duly notified in the return warrant. C. O. No. 99 of vol. 3.

Warrants to be forwarded to the nizamut adawlut after execution.

* *See para.* 997.

2230. By sect. 78, Reg. IX. 1793* warrants for capital punishment are to be transmitted, after being carried into execution, to the nizamut adawlut. Session judges are to pay strict attention to this rule, and to forward the death warrants immediately on the receipt of them from the magistrates. C. O. No. 134 of vol. 2.

Godna.

What particulars to be inscribed, and on whom.

2231. In order to facilitate the re-apprehension of convicts sentenced to confinement for life who may make their escape from jail, all convicts of this description are to have the following particulars inscribed on their foreheads, viz. their name, the crime of which they have been convicted, the date of the sentence passed against them, and the name of the zillah by the court of which it has been passed. This inscription is to be made by the process termed godna, by which the Hindoo women ornament their faces, and which leaves a blue mark that cannot be effaced without tearing off the skin. *Beng.* and *Ben.* Reg. IV. 1797, sect. 11. *Ced. Prov.* Reg. VII. 1803, sect. 35.

On all sentenced to transportation for life;

2232. The process of godna, as directed above, is to be performed on all prisoners sentenced to transportation for life, immediately on the magistrate's receiving the warrants of the sessions court, unless he should see cause in any instance to postpone the operation. Jail rules, sect. 6, para 7.

but on none imprisoned for a limited period. The nizamut adawlut may always exempt.

2233. Persons sentenced to a limited period of imprisonment are not to be marked by this process: and it is competent to the nizamut adawlut to except any prisoners, sentenced to imprisonment for life, from being so marked, in cases wherein there appears to be special reason for such exception. Reg. XVII. 1817, sect. 12, cls. 2 and 3.

Example of persons exempted.

2234. The nizamut adawlut exempted from godna certain persons, who were sentenced to perpetual imprisonment in the jail at Agra without fetters or hard labor, in consideration of the circumstances and rank in life of the prisoners. Const. No. 134.

2235. The particulars required by the above rules are invariably to be marked upon the forehead of the convict immediately above the eyebrows in a straight line. It is the duty of every magistrate personally to examine each prisoner on whom godna has been inflicted; and for every deviation from or neglect of the above rules, that functionary is to be held responsible. C. O. No. 108 of vol. 3.

Particulars how to be marked, and magistrate to inspect.

2236. The magistrate is to cause the operation to be performed early in the morning, and is to adopt precautions to prevent the convict's defacing the inscription in the course of the day. The magistrate is also to renew the inscription, if so defaced as to become illegible. Reg. XVII. 1817, sect. 12, cl. 4.

Magistrate to prevent defacement, and to renew if necessary.

2237. In submitting applications for the removal of prisoners sentenced to imprisonment for life to the Allipore or other jail, the magistrate is to certify that they have been marked by godna. The superintendent of the Allipore jail is to report to the nizamut adawlut the cases of any prisoners, who are received from the different zillahs not duly marked; and he is to renew the inscriptions if defaced or illegible. C. O. No. 213 of vol. 2.

Magistrate to certify execution; superintendent of Allipore jail to report cases not properly marked.

Corporal punishment.

2238. All prisoners are to be examined by the surgeon of the station (or in his absence by the native doctor) previous to their being flogged; and the punishment is to be postponed of any prisoner, whom the surgeon considers in too infirm a state to receive it, as long as he may judge necessary. The native doctors attached to the jails of the several stations are to be present on all occasions, when prisoners are flogged; and the punishment is to be stopped at any stage of it, if the native doctor is of opinion that the infliction of the remaining stripes will endanger the prisoner's life; in which case, the remainder of the punishment is to be postponed until the surgeon of the station considers the prisoner capable of sustaining it. C. O. Nos. 10, and 12 of vol. 1.

Prisoners always to be examined by the surgeon previous to punishment by stripes,

2239. All prisoners sentenced to be flogged should be brought before the magistrate immediately previous to the infliction of the corporal punishment, that he may, by a personal observation, and a reference, if necessary, to the surgeon of the station, satisfy himself that the prisoner does not labour under any bodily infirmity, and that his general state of health at the time is such as to render him capable of sustaining the punishment without the probability of endangering his life. C. O. Nos. 118, and 316 of vol. 1.

and by the magistrate.

2240. No female is to be sentenced to corporal punishment by stripes. The ratan is the only instrument to be used in the infliction of corporal punishment by stripes; and the sentences and warrants are to direct the same accordingly. Reg. XII. 1825, sects. 3, and 4.

Not to be inflicted on females. Ratan only to be used.

2241. When a prisoner is flogged, he is to be tied to a whipping post constructed in such manner as to secure him from receiving any part of the blow on the fore part of his body; and the striker is to be positively enjoined to strike the prisoner on the back only. C. O. No. 10 of vol. 1.

Whipping how to be inflicted

Certificate

2242. In order to prevent the detention of prisoners in the jail beyond the period of their sentences, all prisoners sentenced by the sessions courts, and also those sentenced by the nizamut adawlut, to imprisonment for a limited period, are when their sentence is

of sentence to be given to prisoner:

explained to them, to be furnished with a certificate signed by the magistrate, and sealed with his official seal, shewing the name, age, and personal description of the prisoner, the crime of which he is convicted, the period of imprisonment to which he is sentenced, the date of the warrant, and the date on which the period of the sentence will expire, in the form No. 22 of appendix C. C. O. Nos. 292, 294, and 295 of vol. 1.

which is to be returned in case of death or expiry of sentence.

2243. The magistrates are to cause the prisoners to deliver up, on their discharge, the certificates granted to them at the time of their sentences; as well as to be careful that such certificates are taken back and destroyed in cases of death before the expiration of the sentence. C. O. No. 294 of vol. 1.

Certificate to be amended in case of mitigation of sentence.

2244. When the sentence passed on a prisoner is mitigated, the magistrate is to recall the original certificate; and, on explaining to him the mitigated sentence passed upon him, is to furnish him with a new certificate specifying the period when the reduced term of imprisonment awarded therein will expire. C. O. No. 21 of vol. 3.

Register of unexpired sentences.

Rules for keeping.

2245. With the view to prevent the possibility of the detention of any prisoner beyond the term of imprisonment adjudged against him, the session judge and magistrate are to keep, in the English language, registry books of all unexpired sentences, in prescribed form (No. 16 of appendix B). The entries are to be made by the magistrate immediately on receiving the warrant. Persons are to be entered under the year in which their sentences expire, so that a glance over it at the end of each year will show whether any have been by neglect confined beyond their period of sentence. A memorandum of this is to be made and signed by the session judge or magistrate at the close of each year. Prisoners sentenced to death, or to imprisonment for life, are to be entered in the year in which they are sentenced. The register of each court is to be confined to the warrants issued from that court. The register of sentences passed by the magistrate, and joint magistrate, is to be kept by the foujdaree nazir, and submitted for the inspection of the magistrate at the commencement of each month. C. O. Nos. 23, 71, 167, 178, and 225 of vol. 2.

Rule in case of mitigated sentence.

2246. Whenever the sentence passed on a prisoner is mitigated, the magistrate, as well as session judge where the original sentence has been passed by the latter officer, is immediately to cause the name of the prisoner to be struck out, in red ink, from the register of the year, in which such original sentence would have terminated, and to be entered in the register of the year in which the mitigated sentence is to expire, inserting in col. 7 of the former register a memorandum of such mitigated sentence. When the mitigation or remission of punishment has been ordered by the nizamut adawlut, the endorsement on the prisoner's warrant of such mitigation or remission is to be made in the vernacular language of the district, as well as in English. C. O. No. 21 of vol. 3.

Sentence passed in an other jurisdiction.

By joint magistrate not residing at sudder station.

2247. All prisoners committed by a joint magistrate not residing at the sudder station to take their trial before a sessions court, if sentenced to a period short of perpetual imprisonment, and if banishment form no part of their sentence, are to be sent to be imprisoned till the expiration of their term at the station of the joint magistrate by whom they were committed, provided the jail at such station has room and accommodation for the prisoners without danger to their safe custody or health. Where this is not the case,

the prisoners must, either all or part of them, according to the necessity, be confined in the jail of the magistrate's station. C. O. No. 288 of vol. 1.

Execution of sentences of mofussil courts in jails within the limits of the supreme court.

2248. Whereas it is expedient, that offenders sentenced by the mofussil authorities to imprisonment, with or without hard labor, should be subjected to the most improved rules of prison discipline, which cannot in all cases be conveniently done except in the prisons locally situate within the jurisdiction of Her Majesty's supreme courts, it is enacted that all civil and criminal jails and houses of correction within the jurisdiction of Her Majesty's supreme courts, shall, according to the nature of the case, be liable to be used by the sheriff for the purposes of this Act [*i. e.* the execution of mofussil processes within the jurisdiction of the supreme court], and the parties imprisoned therein under the authority of this Act shall be liable to the prison-discipline thereof;—and all sentences of imprisonment passed by any judge, court, or magistrate in the Company's territories beyond the local limits of the supreme court, may be executed in whole or in part within any of the jails or houses of correction aforesaid, provided that a copy of the warrant of commitment or other process authorizing the imprisonment be so indorsed as aforesaid, [*i. e.* by one of the judges of the supreme court] and such indorsement contain the necessary directions. Act XXIII. 1840, sect. 8.

Execution of sentences passed by courts in extra-regulation provinces.

2249. The several magistrates are competent to give effect to any sentence that is passed by the criminal courts established, or that may be established, under orders from the governor general in council, for the administration of criminal justice in territories appertaining to the Company's dominions, but not subject to the operation of the general regulations. Reg. IX. 1822, sect. 3, cl. 1.

the warrant of such court is sufficient authority for holding any prisoner in confinement;

2250. A warrant under the official seal and signature of the officer or officers exercising criminal jurisdiction within such territory, is sufficient authority for holding any prisoner in confinement, or for transmitting any prisoner for transportation beyond sea, or for inflicting any punishment defined and prescribed therein. Reg. IX. 1822, sect. 3, cl. 2.

if the magistrate entertains doubts of the legality of the warrant, or of the competency of the court issuing it;

2251. In the event of any doubt being entertained as to the legality of any warrant sent to be executed by any magistrate, or as to the competency of the person or persons, whose official seal and signature is affixed thereto, to pass the sentence and issue such warrant, a reference of the point is to be made to government, by whose order on the case the magistrate and all other public officers are to be guided as to the future disposal of the prisoner: pending any such reference, the prisoner or prisoners are to be detained in custody in such manner and with such restrictions or mitigations as are specified in the warrant. Reg. IX. 1822, sect 3, cl. 3.

treatment and security of prisoners confined under such warrant.

2252. The provisions of the existing regulations and all other rules in force for the treatment and security of prisoners confined in the jails, are to apply and to be of equal force and effect in the case of prisoners confined under this section, as of other convicts detained under sentences of the criminal courts passed under the regulations in force. Reg. IX. 1822, sect. 3, cl. 4.

Execution of sentences passed by Company's officers administering foreign states;

2253. Within the territories subject to the government of the East India Company, and without the local limits of the jurisdiction of Her Majesty's courts of judicature, the several officers in charge of jails are competent to give effect to any sentence that is

passed by any court established, or that may be established, by the authority of the governor general in council for the administration of criminal justice in states or territories administered by officers acting under the authority of the Company, although such states or territories are not subject to the government of the presidency of Fort William in Bengal, Fort St. George, or Bombay, or are not subject to the operation of the general regulations. Act V. 1847, sect. 1.

warrant of such officer is sufficient authority for holding prisoner in confinement;

2254. A warrant under the official seal and signature of the officer or officers exercising criminal jurisdiction within such states or territories as aforesaid is sufficient authority for holding any prisoner in confinement, or for transmitting any prisoner for transportation beyond sea, or for inflicting any other punishment prescribed therein. Act. V. 1847, sect. 2.

if the officer in charge of the jail entertains doubts of the legality of the warrant, or of the competency of the officer issuing it;

2255. If any officer in charge of a jail entertains any doubt as to the legality of any warrant sent to him for execution under this Act, or as to the competency of the person or persons, whose official seal and signature is affixed thereto, to pass the sentence and issue such warrant, such officer is to refer the matter to the government to which he is subject, by whose order on the case such officer, and all other public officers, are to be guided as to the future disposal of the prisoner. Pending any such reference the prisoner is to be detained in custody in such manner and with such restrictions or mitigations as are specified in the warrant. Act. V. 1847, sect. 3.

treatment and security of prisoners confined under such warrant.

2256. The provisions of the existing Acts and Regulations, and all other rules in force for the treatment and security of prisoners confined in the said jails, are to apply and to be of equal force and effect in the case of prisoners confined therein under this Act, as in the case of other prisoners confined therein. Act V. 1847, sect. 4.

SECTION X.

OF REMOVAL OF PRISONERS UNDER SENTENCE.

Form of application for orders for removal.

2257. No prisoner under sentence of transportation, or perpetual or temporary imprisonment in banishment, though the place in which he is to undergo his imprisonment is mentioned in the sentence, is to be removed from the jail until the receipt of the orders of government on the application for his removal. The magistrates are to submit separate statements of convicts sentenced by the sessions courts, and by the nizamut adawlut, according to the forms A, B, and C (Nos. 18, 19, and 20 of appendix C). Statement A is to be prepared and submitted after the expiration of 30, but within the period of 45 days, from the end of the month in which the sentences were passed. The magistrate is to be careful not to include in the same statement convicts sentenced at the jail deliveries of different months. In the event of the issue of a warrant including a sentence of banishment being suspended in any case [pending reference to the nizamut adawlut] under the rule contained in cl. 6, sect. 4, Reg, IX. 1831*, the magistrate is to submit a statement in form B within 15 days after the receipt of the warrant. Statement C is to be prepared and submitted within 15 days from the receipt by the magistrate of the warrant of the session

* *v. para.* 1028.

judge for carrying into effect the sentence of the nizamut adawlut. Whenever a magistrate has occasion, in consequence of the crowded state of the jail, to apply for permission to remove convicts not sentenced to banishment to another district, he is to submit statements in form as similar to these as possible, keeping the prisoners sentenced by the session court separate from those sentenced by the nizamut adawlut. In these statements the name of each prisoner's father is invariably to be inserted. C. O. Nos. 183, and 204 of vol. 2.

So, if removal of prisoners is necessary from the crowded state of the jail.

2258. The magistrates are to report when convicts are sentenced to transportation beyond sea, or to banishment, specifying the names, ages, crimes, and sentences of the several convicts; and, in the case of those sentenced to banishment, the district in which they have usually resided before they were brought to trial. Reg. LIII. 1803, sect. 8, cl. 4.

Reports of convicts sentenced to transportation or banishment

2259. All statements of prisoners sentenced to imprisonment in banishment, or in transportation, or for life in the Allipore jail, are to be forwarded by magistrates for the orders of government. C. O. Govt. *Bengal*, No. 1072, October 10, 1844.

to be made to government by magistrate.

2260. Magistrates are to distinguish in these reports prisoners under sentence of the nizamut adawlut, from those who have been sentenced by the sessions court; specifying also the date of sentence in each case. C. O. No. 150 of vol. 1.

Prisoners to be classified therein.

2261. Abstracts in a tabular form of sentences of imprisonment in banishment, or in transportation, or for life in the Allipore jail, passed by the nizamut adawlut or session judges, are to be forwarded to government by the court and the session judges respectively. Such abstracts are to be forwarded by the sudder court as soon after the date of sentence as is practicable; but abstracts of sentences of banishment, passed by the session judges, are not to be transmitted by them, until after the expiration of 3 months from the date of sentence, in order to allow of that period for appeal. C. O. Govt. *Bengal*, No. 1072, October 10, 1844.

Abstracts of sentences to be forwarded by nizamut adawlut and session judge.

2262. The jail darogah is to be furnished with a memorandum, for the guidance of himself and successors, to the effect that he will be expected to draw the attention of the magistrate to the cases of any prisoners sentenced to imprisonment in banishment, for whose transfer no orders are received within 4 months from the date of sentence. This however is not intended to relieve the magistrate from a proper share of responsibility. C. O. Govt. *Bengal*, No. 2014, September 24, 1845.

Darogah to remind the magistrate, if no orders are received for 4 months.

2263. The government, after receiving such reports, will issue the necessary directions for conveying to the Allipore jail the convicts sentenced to transportation beyond sea, when the state of that jail admits of their being received; or an opportunity offers for transporting them; and will also give the requisite instructions concerning the removal of convicts under a sentence of banishment. The government is also competent, under the discretion allowed by the Mahomedan law, to order the removal of all convicts, under sentence of imprisonment, to any jail or district within the Company's possessions, in which it is thought proper to keep or employ them during the period of their respective sentences, although no specific sentence of banishment has been passed against them. But no such removal is to take place without the special order of government. Reg. LIII. 1803, sect. 8, cl. 5.

Orders to be given by government in all cases of removal.

Government may retain such prisoners in the jail.

2264. It is competent to government to detain in the jail at Allipore, for any period deemed expedient, any convicts sentenced to transportation. Reg. IX. 1813, sect. 2, cl. 2.

In what cases they are not to be sent to Allipore, in regard to period of sentence;

2265. Prisoners are not to be sent to Allipore from the *western provinces*, who have been sentenced to imprisonment for a shorter period than 14 years; nor from the *lower provinces*, who have been sentenced to imprisonment for a shorter period than 7 years. C. O. No. 106 of vol. 1.

in regard to incapacity for labor.

2266. No persons are to be forwarded to Allipore jail, who are incapable of bodily labor, from age, sickness, or other infirmity; or who have been exempted from bodily labor by their sentences, or in consideration of their former rank and situation in life, under the C. O. Nos. 3, 8 and 44 of vol. 1*. C. O. No. 88 of vol. 1.

* *v. para.* 2152 *et. seq.*

At what seasons to be sent.

2267. Convicts sentenced to imprisonment in Allipore jail should be forwarded so as to arrive at Calcutta during the cold season, or in the early part of the south east monsoon, in order that their constitutions may be habituated to the climate previously to the commencement of the periodical rains. C. O. Nos. 97, and 106 of vol. 1.

Mode of transmission in *lower provinces*,

2268. On the receipt of warrants from the session judges for the transportation of prisoners sentenced by the nizamut adawlut, the magistrates are to forward such prisoners by the first convenient opportunity to the superintendent of the Allipore jail, transmitting to that officer at the same time by dawk a statement in the form C [No. 20 of appendix C], and headed "a statement of convicts sentenced to transportation beyond sea for life, despatched on the —— of —— 184- to the Allipore jail from the jail of ——." Simultaneously with the above statements the magistrates are to forward copies of the same to the secretary to government for comparison with the abstracts furnished by the sudder court. C. O. Govt. *Bengal*, No. 1964, August 27, 1845.

and receiving jails.

2269. [I.] The undermentioned jails are to serve as receiving jails for all prisoners sentenced, in the districts specified, to transportation or to imprisonment in the Allipore jail:

Patna—for the districts of	Patna Sarun Chumparun Tirhoot Shahabad Behar	Rajeshye—for the districts of	Rajeshye Malda Dinagepore Rungpore Bograh Pubna
Bhaugulpore—for	Bhaugulpore Purneah	Dacca—for	Dacca Mymunsing Sylhet Tipperah
Backergunj—for	Backergunj Noakholly Chittagong	so long as a government steamer continues to run between Dacca and Calcutta.	

[II.] The magistrates of the several districts are to forward their convicts to the receiving jails, at such times, and in such numbers, as is most convenient, accompanied with their warrants and descriptive rolls. [III.] From the receiving jails, as also from the river stations of Monghyr and Moorshedabad, the convicts are to be despatched under suitable escort to Calcutta on the government steamers, as opportunity may offer, the magistrates in charge of those jails communicating direct for the purpose with the steam agents. The above arrangement applies to Moorshedabad only for such time as the Bhaugiruttee is

navigable for steam vessels; during the remainder of the year convicts are to be forwarded from that district to Allipore in the same manner as heretofore. [IV.] The magistrates in charge of the receiving jails, as also the magistrates of Monghyr and Moorshedabad, are, previous to each despatch, to transmit by dawk to the superintendent of Allipore jail a statement of the prisoners about to be despatched, in order that due provision may be made for their reception. The statement is to be in the form prescribed in the preceding order with an additional column, showing the district from which each prisoner was originally sent. [V.] Such magistrates are to be careful to forward to the secretary to government, simultaneously with the despatch of these statements, copies of the same for comparison with the abstracts furnished by the sudder court. They are also to be particularly careful to have prisoners and their guards in readiness, together with provisions for the usual duration of the trip, which may be ascertained from the steam agents, so that no delay may occur in their embarkation. Resolution, Govt. *Bengal*, June 3, 1846.

Mode of transmission in *western provinces*, and receiving jails.

2270. (I.) The following jails are to be considered as receiving jails in the first instance for all prisoners, sentenced to transportation in the districts specified:

Allyghur—for the districts in the Delhi and Meerut divisions;

Furruckabad—for the districts in Rohilkund;

Cawnpore—for the districts in the Agra Division (except Furruckabad);

Allahabad—for Bundelcund and the districts in the Allahabad division (except Cawnpore);

Benares—for Juanpore;

Ghazeepore—for Azimghur and Goruckpore.

[II.] The magistrates of the several districts are to forward their convicts to the receiving jails at such times and in such numbers as may be most economical and convenient, accompanied with the usual warrant and descriptive roll. The magistrates in the several Delhi districts are to forward them in the first place to the magistrate of Delhi, who is to receive charge of them, and send them on with the convicts from his own jail. In the same way the magistrate of Meerut is to receive charge of the prisoners from the Dhoon, Mozuffernuggur and Seharunpore; the magistrate of Bareilly of those from Bijnore and Moradabad; the magistrate of Agra of those from Muttra; and the magistrate of Futtehpore of those from Banda and Humeerpore. [III.] On the 1st January in each year, and on the first day of each following quarter, the prisoners who have been collected at Allyghur and Furruckabad respectively, are to be forwarded to Cawnpore, from whence they are to proceed, together with the Cawnpore prisoners, in one body to Allahabad. [IV.] From Allahabad and the other river stations, the convicts are to be despatched to Calcutta per steamer, as opportunity may offer; the magistrates communicating direct for this purpose with the agent for government steamers at Allahabad. [V.] Previous to each despatch, the magistrate of each river station is to furnish the superintendent of the Allipore jail direct with a statement shewing the number of prisoners to be expected, in order that due provision may be made for their reception. This statement is to be drawn out in the usual form [*i. e.* the statement C of para. 2257], with an additional column to shew the district from which the prisoner was originally sent, and is to be headed "statement of convicts sentenced to transportation for life, despatched on the — of —— 184 — to Calcutta from

the jail at ———." — A copy of each statement is to be forwarded for record in the office of the secretary to government. Magistrates, forwarding convicts under these orders for transmission to the river stations, and ultimately to the Allipore jail, are to be careful to send with each such convict a descriptive roll, and also copy of the warrant under which he is confined. These documents are to accompany the prisoner and to be delivered with them to each magistrate, into whose charge he is committed on the way. The magistrates of Allahabad, Mirzapore, Benares, and Ghazeepore, are to abstain from forwarding any convict to Allipore unless they have received the above mentioned papers regarding them. Notifications, Government *N. W. P.* September 12, 1845, and January 8, 1846.

Lists of convicts to be sent with them,

2271. When convicts under sentence of transportation are sent to the Allipore jail, an accurate list is to be transmitted with them in the following form:

Names of prisoners and of their fathers.	Description of prisoners.	Crime.	Date of sentence.	Period of transportation.

It is important that the description of the persons of the convicts inserted in the second column should be accurate. The lists are to be written in both the Hindostanee (or Bengalee in the Bengal districts) and Persian languages, as well as in English, and the magistrates are to issue positive orders, that the guards on relieving each other should carefully compare the same with the convicts. The same rules are applicable to prisoners under sentence of banishment to other districts, either for life, or for a term of years. C. O. Nos. 7 and 25 of vol. 1; and No. 20 of vol. 3.

noting dangerous characters.

2272. If any of such convicts is of a notorious and dangerous character, it is to be noted in the above statement. C. O. No. 95 of vol. 1.

Precautions to be used in order to ensure safe custody during transmission.

2273. Convicts of dangerous character, on their passage by water from one station to another, should be confined entirely to the boat, or should be permitted to land only in small numbers at a time, if it is necessary to remove them occasionally on shore. The general use of handcuffs and neckchains would be objectionable, as endangering the lives of the convicts in case of accident to the boat by fire or otherwise; but in special instances they are indispensable; and the practice is not therefore prohibited, but is to be resorted to only in cases of emergency. The precautions for security should be adapted in each instance to the number and character of the prisoners; and the magistrate must take such measures as appear necessary for preventing attempts on the part of the prisoners to overpower their guard, without subjecting the prisoners to more restraint than is requisite for their safe custody. C. O. No. 161 of vol. 1.

Single burkundaz not a sufficient guard.

2274. Officers are not to forward a prisoner charged with a heinous offence from one station to another under such inadequate custody as the charge of a single burkundaz. The crime of which a prisoner under such despatch is accused should also be invariably written in the perwanah meant to accompany the despatch. C. O. No. 120 of vol. 3.

Penal settlements.

2275. All convicts sentenced to transportation are to be sent to such of the British settlements of Asia, the island of Mauritius, or its immediate dependencies, as government appoints; and are also liable to be employed at any places within the limits of the settle-

ment, to which they are sent, which are from time to time fixed by the local administration. A power is further vested in government of transferring convicts from one place to another in such settlements; and such transfer is authorized as often as it is found requisite. Previously to ordering such transfers, the governor general in council is to consult the local administration upon the propriety of allowing any convicts to be exempted from removal, whose good conduct has merited this indulgence, or who, from sickness and infirmity, are not fit objects to be removed. Reg. IX. 1813, sect. 2, cl, 3. Reg. XIV. 1816, sect. 15.

Prisoners sentenced to perpetual imprisonment in Allipore jail may apply to be transported.

2276. Whenever any convict, sentenced to imprisonment for life in the Allipore jail, is desirous of obtaining a commutation of his sentence to transportation for life, he is to make known his wishes to that effect, either verbally or in writing, to the superintendent or other officer in charge of the jail; who is to call such convict before him, and after taking down his request in writing, to be signed by the said convict and attested by two or more respectable persons, is to report the case for the orders of government, stating at the same time any objections which, in his opinion, exist to the commutation of the sentence, on account of the dangerous character of the convict, or other circumstances. Reg. I. 1828, sect. 2, cl. 1.

Government may commute the sentence accordingly.

2277. It is competent to the governor general in council, on consideration of such report, to commute the sentence passed upon the convict of imprisonment for life in the Allipore jail to transportation for life to any of the British settlements in Asia, and the sentence so commuted is to be carried into effect in the same manner as sentences of transportation beyond sea for life are enforced. Reg. I. 1828, sect. 2, cl. 2.

Punishment for return from transportation in such case.

2278. The provisions contained in sect. 5, Reg. XII. 1818(a) are hereby declared applicable to convicts, whose sentences are commuted under the foregoing clause, and who escape from the place of their transportation, and return without permission to any part of the Company's territories. Reg. I. 1828, sect. 2, cl. 3.

SECTION XI.

OF RELEASE OF PRISONERS.

Mode of.
Orders for discharge.

2279. All orders for receiving prisoners into jail, and for their final discharge, are to be signed by the magistrate or his assistant, and addressed to the jailor. Jail rules, sect. 10, para. 1.

Hour and place of release.

2280. No prisoner is to be released on any occasion during the night; and all prisoners ordered to be discharged are to be brought to the magistrate's cutcherry, and to receive their discharge in the presence of the magistrate or his assistant. Jail rules, sect. 10, para. 2.

(a) This is evidently an error,—for the section cited allows only extra imprisonment (with stripes) for two years, which must be inoperative in cases of prisoners sentenced to imprisonment for life. Probably cl. 2, sect. 9, Reg. LIII. 1803 is intended, which allows sentence of death.

Magistrate how to proceed, if the prisoner is confined in a jurisdiction different from that in which he was committed for trial.

2281. When a convict sentenced to temporary imprisonment is in confinement, at the approach of the period fixed for his discharge, in a jurisdiction different from that in which he was committed for trial, he is to be sent back (with the warrant containing his sentence, or an authenticated copy of it, if the warrant includes other convicts not sent at the same time) to the magistrate of the jurisdiction in which he was committed for trial; unless the magistrate having charge of the convict, on information of his intended place of residence, or for any other special reason, judges it proper to discharge him in his own jurisdiction, or to send him for discharge to the magistrate of a different jurisdiction, in which last case he is to be sent to the magistrate of such jurisdiction; and the magistrate to whom the convict is sent in such cases, is to carry into effect the warrant for his discharge, taking bail or not, as therein directed; or in particular cases requiring bail, though not directed in the warrant, if from any information before him of the prisoner's dangerous character, it appears indispensably necessary to adopt this precaution. Provided that in all such cases the prisoner, with a full report of the magistrate's information respecting him, is to be brought before the session judge for his orders.—The magistrate having charge of convicts to be discharged in another jurisdiction under this rule, is to send them in such custody as appears sufficient, and with or without fetters, or with an iron on one leg only, as he deems proper, to the magistrate by whom they are to be discharged, so as to reach him before the expiration of their respective sentences: and whenever a convict has been committed for trial in a jurisdiction different from that to which he is sent for the purpose of being discharged, or has resided before he was apprehended in a different district from that in which he was committed, and also from that in which he is sent for discharge, notice is at the same time to be given to the magistrate both of the jurisdiction in which he was committed for trial, and of that in which he formerly resided: and such magistrates and the police officers, being duly advised of their release, are to take the requisite precautions to watch the conduct of the persons discharged, especially of such as appear to be of a dangerous character, and to guard against the repetition of criminal offences by them. The magistrate sending convicts from one station to another under these instructions, is to furnish them with a sufficient allowance for their subsistence on the way; but the allowance for one month's maintenance, to which convicts are entitled under sect. 25, Reg. IX. 1793 [see below], is to be paid to them by the magistrate who discharges them; and he is required to be particularly careful that such allowance is, in all instances, received without deduction by the person entitled thereto. C. O. No. 66 of vol. 1.

Prisoners discharged to be furnished with certificate.

2282. All prisoners discharged by the magistrate or his assistant are to be furnished with a certificate or roobakaree, under his official seal and signature, specifying the following particulars, viz. on what ground or charge the prisoner was apprehended, and at what period; the result of any enquiry made respecting the prisoner; and, if brought to trial on any specific charge, the result of such trial, and the sentence passed upon him, together with the execution of the sentence, if he has been convicted and punished; the order of the prisoner's discharge, by whom passed, and on what date; and if security has been given by the prisoner for his future appearance or good behaviour, the names of the sureties, and amount in which they were bound respectively. C. O. No. 116 of vol. 1.

Means of preparing it.

2283. Magistrates are furnished with copies of the futwas of law officers in all cases of sentences passed by the sessions court and the nizamut adawlut, expressly to enable them to prepare this certificate. C. O. No. 185 of vol. 1.

Subsistence money to be given to discharged prisoners.

2284. The magistrate is to pay to all persons released from jail, after an imprisonment of six months or upwards calculating from the date of their sentence, who appear to be in actual need of such assistance, a sum sufficient to maintain them for one month. The sum to be paid to each individual is to be regulated by his situation in life, but is in no case to exceed five rupees; and in every instance is to be confined as much within that amount as may be consistent with the purpose for which the allowance is granted. *Beng.* Reg. IX. 1793, sect. 25. *Ced. Prov.* Reg. VI. 1803, sect. 25.

For reward.

Magistrate may report for remission of sentence convicts deserving of such reward.

2285. If any convict, under sentence of imprisonment, from his uniform good behaviour, and industrious performance of the work assigned to him, or from his meritorious conduct in preventing the escape of other prisoners, or rendering any other public service, appears to the magistrate having charge of him to deserve a remission of the further punishment to which he is liable under his sentence, or of any part of it; a report of the circumstances of the case, with a copy of the sentence passed upon the prisoner, is to be transmitted by the magistrate through the session judge to the government, who is empowered to remit the further punishment adjudged against the prisoner, in whole or in part, if there appears to be sufficient cause for it. Reg. XIV. 1816, sect. 10, cl. 1. C. O. Govt. *Bengal*, No. 1072, October 10, 1844, para. 7.

Full report required in such cases.

2286. A full report of the circumstances of the case is to be sent, so as to enable the government to form a judgment upon the propriety of granting the remission of punishment which is proposed. C. O. No. 98 of vol. 1.

Magistrate may himself order discharge in certain cases.

2287. In cases of short imprisonment adjudged by the magistrate or his assistant, wherein the object would be defeated by the delay attending a reference to government as directed above, the magistrate is empowered to order the discharge of a prisoner, who appears to deserve a remission of punishment on the grounds specified; provided that his reasons for every such order are recorded on his proceedings, to be submitted, when required, for the information of the session judge. Reg. XIV. 1816, sect. 10, cl 2.

For infirmity.

Report may be made for release of blind or decrepid prisoners.

2288. When a prisoner is suffering under blindness or decrepitude, or other incurable infirmity, such as to incapacitate him, if released, from the further commission of crime, and the release of whom therefore would not be attended with mischief or danger, a report is to be submitted to government* by the magistrate through the session judge with the sentiments of the latter as to the propriety or otherwise of the clemency of government being extended to such person. C. O. No. 52 of vol. 2.(a) C. O. Govt. *Bengal* No. 1072, October 10, 1844.

* *to the nizamut adawlut in N. W. P. See para.* 2291.

(a) This circular originally had reference to such persons only as were in confinement at the time of its issue; but it appears to have been acted upon afterwards as a general rule, for I can find no order between that and the one quoted in the next paragraph, which refers to a general practice.

Form of such application.

2289. Such applications are to be made in the form No. 16 of appendix C. In col. 10 of this statement, the civil surgeon is to give his opinion in the form of a declaration: the magistrate is to fill up col. 11 with his opinion and such observations as the case appears to call for, particularly as regards the general conduct and character of the prisoner, and to forward the statement to the session judge; who, provided he agrees with the magistrate and surgeon, is to enter his opinion and remarks in col. 12, and to submit the original statement for the consideration and orders of the court, retaining a copy of it for record in his own office. The magistrate is also to send with the application a copy of the warrant under which the prisoner is confined. C. O. No. 218 of vol. 1. C. O. No. 9 of vol. 3.

Opinion of surgeon required in cases of blindness.

2290. Officers in charge of jails are warned of the practice prevalent among convicts, with a view to obtain their liberation from jail, of causing temporary, and possibly permanent, loss of vision by applying lime and other injurious substances to their eyes. In applications for the release of prisoners afflicted with blindness, the surgeon is to record his opinion as to the origin of the calamity, and to state distinctly whether, from the appearance and nature of the malady, there is any reason to suspect that it has been designedly produced, or is purely the result of misfortune. C. O. Nos. 219 *W. P.*, and 220 *L. P.* of vol. 3.

Power of release in N. W. P. vested in nizamut adawlut.

2291. Act XVIII. 1844 does not interfere with the privilege heretofore exercised by the nizamut adawlut, under express instructions from the local government, of releasing blind and infirm prisoners within certain specified limits. *Western Provinces*, C. O. No. 190 of vol. 3.

Session judge cannot release on account of ill health, but may authorize removal;

2292. A session judge is not competent to authorize the release from confinement of any convict under sentence of imprisonment, on security or otherwise, without the previous sanction of the nizamut adawlut [or government]; but whenever the bodily health of a prisoner is such as, in the opinion of the civil surgeon, to render his temporary removal from the jail or hospital absolutely necessary, either for his own recovery, or if the disorder be of a contagious nature for the safety of other prisoners, or for any other good and sufficient cause, and the emergency of the case does not admit of a previous reference to government, the proper course is to authorize and direct the magistrate to remove him to any suitable building, or to a neighbouring jail, and to report the circumstances without delay to the court. Const. No. 1016.

nor for the purpose of apprehending other offenders.

2293. A session judge is not competent to authorize the release from confinement, on security or otherwise, of any convict under sentence, for the purpose of apprehending offenders. Const. No. 1013.

Magistrate cannot release prisoners on account of ill health.

2294. A magistrate is not competent to release prisoners before the expiration of their sentences, on account of their state of health, without the authority of government. Const. No. 841.

SECTION XII.

OF SECURITY PRISONERS.(a)

2295. Security prisoners cannot be exempted from labor by the payment of a fine. Const. No. 881.

Cannot exempt themselves from labor.

2296. In conformity with the spirit of sect. 10, Reg. XXII. 1793 (*Ced. Prov.* sect. 10, Reg. XXXII. 1803) the magistrate is at liberty to employ prisoners, confined till they furnish security for their future good behaviour on works of a public nature. He must, however, be careful not to employ them at any great distance from the sudder station, where they might be subject to difficulty in procuring sureties, and is on no occasion to send them beyond the boundaries of his district. C. O. No. 72 of vol. 1. Const. No. 160.

To be employed in the district on public works.

2297. Persons in confinement under requisition of security, in pursuance of sect. 9, Reg. VIII. 1818, as of dangerous and irreclaimable character for theft or robbery, should be subjected, as hitherto, to public labor; but all others detained for security as vagrants or otherwise, should be subjected only to private labor. C. O. No. 238 of vol. 1.

Distinction to be made in regard to labor.

2298. All prisoners detained in custody for security only, more especially such as are not confined as notorious dacoits or other robbers of dangerous character, are to be kept distinct, as far as possible, from prisoners convicted of specific offences; and are to be confined without fetters, except when the magistrate may judge the use of them requisite to prevent the escape of particular prisoners; and in such case, the magistrate is to issue a written order for that purpose to the jailor. C. O. No. 116 of vol. 1.

To be separated from other prisoners, and confined without fetters.

2299. No prisoner detained under requisition of security in the zillah, in which he has been accustomed to reside, or in which he has been apprehended, is to be removed to the jail of a different zillah, unless the government sanctions the removal, in compliance with the prisoner's own request, and with a view to enable him the more easily to furnish the security required. Reg. VIII. 1818, sect. 6, cl. 1.

Not to be removed to another zillah without sanction of government;

2300. The removal of prisoners confined in a criminal jail on a requisition of security for good conduct to another district, for the purpose of being induced to give evidence as approvers before the officers appointed for the suppression of dacoity, is illegal. But if such prisoners have no objection to be removed to the jail of another district for the sake of giving evidence, government may sanction their removal. Const. No. 1240.

even to act as approvers;

2301. The foregoing rule, however, is not to be construed to preclude the removal of such prisoners from one station to another, in cases in which a due regard to the health of the prisoners, or to their safe custody, or other emergent circumstances, may, in the judgment of the government, render that measure necessary or advisable. Reg. VIII. 1818, sect. 6, cl. 2.

except in emergent cases.

(a) For rules regarding the confining and release of security prisoners, see sect. 2, chap. 1, book 5, "of security for good behaviour."

SECTION XIII.

OF THE CIVIL JAIL.

Control is vested in magistrate:

2302. The control of the civil jail is vested in the magistrate: he is to visit the civil jail once in every week; and to redress all well-founded complaints of ill-treatment which are preferred to him by the prisoners against the jailor, or other person having charge of them. He is also to be attentive at all times to the health and cleanliness of the prisoners, and to be careful that the surgeon attends and administers to the sick in the civil jail, in like manner as he is required to attend the criminal jail. Reg. III. 1826. sect. 2.

and appointment of native officers.

2303. As the magistrate is responsible for the safe custody of the dewanny as well as the foujdaree prisoners, the appointment and removal of native officers, attached to both jails, are vested exclusively in him. Const. No. 442.

Judge to visit, and to issue the necessary instructions.

2304. The session judges, who are directed to visit the criminal jails and to issue to the magistrates such orders as appear to them advisable for the better treatment and accommodation of the prisoners, are likewise to visit the civil jails; and are empowered to issue such instructions, being consistent with the general regulations, as appear requisite for the better treatment and accommodation of the prisoners in the jails, or for inquiring into, and redressing, if established, any alleged grievance or undue restraint during their imprisonment. Reg. IV. 1816, sect. 4.

Communication of prisoners with the magistrate, and judge, or collector.

2305. The judge has no right to be considered as the medium of communication on the part of the magistrate with the civil prisoners; nor can the magistrate constitute his office the channel of communication between the judge or collector and any prisoner confined under civil process. Const. No. 1021.

Collector empowered to imprison in civil jail, or to discharge.

2306. As collectors are empowered by sect. 20, Reg. VIII. 1831 to execute their own awards, their orders for the confinement and release of defaulters need not pass through the civil judge; and the warrant of a collector is sufficient authority to the civil jailor to receive or discharge a prisoner. C. O. No. 131 of vol. 2.

Native judges at subordinate stations.

2307. The native judges, holding their courts within the jurisdiction of a joint magistrate residing at any place other than the sudder station of the zillah court, on forwarding any prisoners to the joint magistrate for confinement in the civil jail, are, at the same time to report the circumstances to the judge, who is to confirm or cancel the order as appears just and proper. C. O. No. 143 of vol. 2.

Judge cannot release on account of illness.

2308. It is not competent to a judge to release a civil prisoner solely on the ground of illness, without the consent of the party at whose instance he was confined. Const. No. 1114.

The magistrate may punish prisoners for

2309. The magistrate is vested with authority to punish, on a summary inquiry, the offences specified in the following section of this regulation. Reg. III. 1826, sect. 3.

2310. Refractory behaviour by any prisoner confined under process of the civil court, such as resistance to the jailor, guards, or other public officers in the regular discharge of their public functions; abusive language to any such officers, and generally any culpable behaviour towards them, which does not involve a serious act of criminality, such as cannot be duly punished by the magistrate, and should therefore be brought before the sessions court. Reg. III. 1826, sect. 4, cl. 1.

culpable behaviour towards the jail officers;

2311. Any other instance of disorderly conduct by a prisoner, such as riot, attempt to escape, conspiracy with other prisoners with a view to escape, or for the purpose of insurrection, or for any other unlawful or prohibited purpose, abusing or assaulting another prisoner, and generally, any misconduct committed by a prisoner whilst in custody, which, under the regulations in force, or from its aggravated nature, does not exceed the competency of the magistrate, and therefore is more properly cognizable by the sessions court. Reg. III. 1826, sect. 4, cl. 2.

disorderly conduct, attempt to escape, &c.

2312. A person sentenced to imprisonment in the civil jail by the collector in a case of illicit opium, effected his escape, but was re-apprehended. Held, that as every escape must involve an attempt to escape, he should be dealt with agreeably to the above provisions. Const. No. 486.

Escape involves attempt to escape.

2313. The powers vested in the magistrate for the punishment of the offences specified in the preceding section, which on a summary inquiry appear to have been committed by any of the prisoners confined under civil process, are declared to be as follows, due regard being had to the nature of the offence, the condition of the prisoner, and every other just consideration applicable to the case. Reg. III. 1826, sect. 5, cl. 1.

Power of magistrate to punish such offences;

2314. The offences specified in the preceding section are punishable by close confinement, or by a reduction of the prisoner's allowance for any term not exceeding two months; the allowance to be in no case reduced below what is consistent with the prisoner's support; and the difference between the prisoner's full allowance, and the reduced rate to be carried to the credit of government as a fine. Reg. III. 1826, sect. 5, cl. 2.

nature of punishment.

2315. If a civil prisoner, sentenced to a reduction of his allowance for breach of prison rules, satisfies his creditor with a view to obtain his release, the magistrate cannot commute the punishment so awarded to fine and imprisonment; but the prisoner, on payment of the demand against him, must be immediately released. Const. No. 426.

Magistrate cannot detain a person entitled to release from civil process.

2316. The rule for conducting such summary inquiries, and recording such sentences, and for their inspection by the session judge, is the same as that prescribed with regard to prisoners confined in the criminal jails by sect. 8, Reg. XIV. 1816.* Reg. III. 1826, sect. 5, cl. 3.

Rule of procedure in such cases.

* *v. para.* 2118.

2317. Provided, however, that nothing in this regulation is construed to give the magistrate any jurisdiction whatever over the question of a civil prisoner's liability to confinement, or title to release, with reference to the civil process under which he has been sent to jail; or to preclude the judge of the civil court, or his ministerial officers,

Limitation of power of magistrate over civil prisoners.

European or native, authorized or deputed by him, from visiting the civil jail; or the judge from summoning any civil prisoner to his court upon matters connected with the civil process under which he is confined, or for other judicial purpose. Reg. III. 1826, sect. 6.

Prisoner not to be confined in fetters to ensure custody.

2318. A civil prisoner cannot be confined in fetters, unless he is suffering under a criminal sentence for having broken jail; in other words, fetters cannot be imposed on a civil prisoner merely to ensure his safe detention in jail. Const. No. 624.

Explanation to be given of prisoners confined for one year.

2319. A brief explanation is to be given of the cause of detention, when any prisoner has been confined in the civil jail for one year. The magistrates having the mere custody of the prisoners cannot give this information, which must be sought from the civil judge or collector under whose order the prisoner is confined: when, therefore, the statement regarding the civil jail is prepared, the magistrate is to forward it to those officers, that they may insert on the back of it the required explanation. C. O. No. 139 of vol. 2.

SECTION XIV.

OF STATE PRISONERS.

By what authority state prisoners are to be confined.

2320. When the reasons stated in the preamble of this regulation[a] seem to require that an individual should be placed under personal restraint, without any immediate view to ulterior proceedings of a judicial nature, a warrant of commitment under the authority of the governor general in council, and under the hand of the secretary to government, is to be issued to the officer in whose custody such person is to be placed. Reg. III. 1818, sect. 2, cl. 1.

Form of warrant to be issued.

2321. The warrant of commitment is to be in the following form:—

To the *(here insert the officer's designation)*.

Whereas the governor general in council, for good and sufficient reasons, has seen fit to determine that (*here insert the prisoner's name*) shall be placed under personal restraint

(a) The preamble of the regulation is as follows:—"Whereas reasons of state embracing the due maintenance of the alliances formed by the British government with foreign powers, the preservation of tranquillity in the territories of native princes entitled to its protection, and the security of the British dominions from foreign hostility, and from internal commotion, occasionally render it necessary to place under personal restraint individuals, against whom there may not be sufficient ground to institute any judicial proceeding, or when such proceeding may not be adapted to the nature of the case, or may for other reasons be unadvisable or improper; and whereas it is fit that, in every case of the nature herein referred to, the determination to be taken should proceed immediately from the authority of the governor general in council; and whereas the ends of justice require that, when it may be determined that any person shall be placed under personal restraint, otherwise than in pursuance of some judicial proceeding, the grounds of such determination should, from time to time, come under revision, and the person affected thereby should at all times be allowed freely to bring to the notice of the governor general in council, all circumstances relating, either to the supposed grounds of such determination, or to the manner in which it may be executed; and whereas the ends of justice also require, that due attention be paid to the health of every state prisoner confined under this regulation, and that suitable provision be made for his support, according to his rank in life, and to his own wants, and those of his family;" &c.

(*here insert the name of the place*), you are hereby required and commanded, in pursuance of that determination, to receive the person above named into your custody, and to deal with him in conformity to the orders of the governor general in council, and the provisions of Reg. III. 1818.

Fort William, the ———

By order of the Governor General in Council,

A. B.

Secretary to Government.

Reg. III. 1818, sect. 2, cl. 2.

Such warrant sufficient authority for detention of prisoner.

2322. Such warrant of commitment is to be sufficient authority for the detention of any state prisoner in any fortress, jail, or other place within the territories subject to the presidency of Fort William. Reg. III. 1818, sect. 2, cl. 3.

Officer in charge of such prisoner to make periodical reports to government.

2323. Every officer, in whose custody any state prisoner is placed, is on the first of January and first of July of each year, to submit a report to the governor general in council, through the secretary to government in the political department, on the conduct, the health, and the comfort of such state prisoner, in order that the governor general in council may determine whether the orders for his detention shall continue in force or be modified. Reg. III. 1818, sect. 3.

If prisoner is in custody of magistrate, the session judge is to visit him;

2324. When any state prisoner is in the custody of a magistrate, the session judge is to visit such state prisoner, and to issue any orders concerning his treatment, which appear advisable, provided they are not inconsistent with the orders of the governor general in council issued on that head. Reg. III. 1818, sect. 4, cl. 1.

and to make periodical reports.

2325. The session judge is to report to government half-yearly on the situation of prisoners confined in the jail, or otherwise in restraint, under the direct orders of government; noticing at the same time whether they are charged with crimes against the state, or confined on any other ground. C. O. No. 48 of vol. 1; and No. 7 of vol. 3, para. 1.

If prisoner is in custody of any other officer, the government is to instruct some officer to visit him, and to make reports.

2326. When any state prisoner is placed in the custody of any public officer not being a magistrate, the governor general in council is to instruct either the magistrate, or the session judge, or any other public officer, not being the person in whose custody the prisoner is placed, to visit such prisoner at stated periods, and to submit a report to government regarding his health and treatment. Reg. III. 1818, sect. 4, cl. 2.

Representations of such prisoner to be forwarded.

2327. The officer, in whose custody any state prisoner is placed, is to forward, with such observations as appear necessary, every representation which such state prisoner may from time to time be desirous of submitting to the governor general in council. Reg. III. 1818, sect. 5.

Early report to be made of the health, and sufficiency of the allowances of such prisoner.

2328. Every officer, in whose custody any state prisoner is placed, is to report to the governor general in council, as soon after taking such prisoner into his custody as is practicable, whether the degree of confinement to which he is subjected appears liable to injure his health; and whether the allowance fixed for his support is adequate to the supply of his own wants and those of his family, according to their rank in life. Reg. III. 1818, sect. 6.

The allowance of such prisoner to be duly appropriated.

2329. Every officer in whose custody any state prisoner is placed is to take care, that the allowance fixed for the support of such prisoner is duly appropriated to that object. Reg. III. 1818, sect. 7.

SECTION XV.

OF NATIVE INSANE HOSPITALS.

Medical and moral management vested in surgeon;

2330. The immediate charge of these establishments, at Dacca, Moorshedabad, Patna, Benares, Bareilly, and Delhi, are placed, as far as regards the medical and moral management of the patients, under the surgeons respectively of those cities; and that of the suburbs of Calcutta under the surgeon attached to the 24-pergunnahs. I. H. Rules, No. 1. (a)

and general superintendence in magistrate

Magistrate to visit frequently;

to listen to complaints of patients and to endeavour to redress them;

2331. The superintendence of each hospital as to its general condition and management, and to the care bestowed upon the patients, is vested in the magistrate of the station. It is his especial duty frequently to visit the hospital lying within his jurisdiction. During these visits he is to observe particularly upon the state of the hospital, as to the due ventilation, cleanliness and general good condition of its wards, and to the easy, contented and comfortable circumstances of the patients. He is likewise to listen attentively to any complaints, which the patients wish to make on the subjects of their detention; on their general treatment, or on any supposed inattention or ill usage on the part of the medical officer, or those in authority under him;—and when any grievances or mismanagement seem to exist, he is immediately to take measures, in communication with the surgeon, for their redress; and is at all times to offer such hints for the direction and guidance of the latter as may seem requisite. I. H. Rules, No. 2.

to make quarterly reports to the session judge;

and to notice any instances of misconduct on the part of the medical officer.

2332. Once a quarter the magistrates are to report to the session judge upon the condition of the hospitals under their control, and on the state of the patients as to medical treatment and general comfort. They are to include in their report such observations as they have to offer on the conduct of the surgeons in charge, in so far as relates to their sedulous discharge of the daily duties of the hospitals, and to the care, humanity, and success with which they appear to treat the unfortunate persons entrusted to their management. It is also the duty of the magistrates to bring to the notice of government through the session judge any instances of neglect or misconduct on the part of medical officers, or of marked disregard of the directions they have deemed it necessary to give on points connected with the internal regulation of the hospitals, or the management of their patients. I. H. Rules, No. 3.

Duty of session judge.

2333. The hospital is to be frequently visited by the session judge, who is to consider himself empowered to visit the various wards, to enquire minutely into the situation and particular cases of the patients, and to suggest to the magistrate such alterations as may appear advisable, in order to the better regulation of the establishment. He is likewise, whilst making his periodical reports to the government, to take occasion to remark on the state of the hospital inspected by him, and on its degree of fitness for the purposes for which it is intended. I. H. Rules, No. 4; and C. O. No. 279 of vol. 1.

(a) These insane hospital rules were circulated by the nizamut adawlut with C. O. No. 69 of vol. 3.

2334. Should any difference of opinion arise between the magistrate and surgeon on points relating to the general management of the hospital, or to the treatment of any individual patient, the question is to be referred to the session judge; whose duty it is to interpose with his advice and authority, and, where the merits of the case would seem to require it, to submit the circumstance for the orders of government. I. H. Rules, No. 5.

Any difference of opinion between the magistrate and surgeon to be referred to the session judge.

2335. Superintending surgeons are, during every return of their regular tours of duty, to inspect the hospitals lying within the limits of their superintendence; and at least once every month, when the hospital happens to be situated at the head-quarters of their division: during these visits they are to inspect minutely the condition of the buildings, carefully examine the registers and diaries, and make particular enquiry into the state of each patient. They are to consider themselves bound to look attentively to the conduct of the surgeon, to control his general practice, and in particular cases to modify it in such manner as may be likely to prove beneficial to the patient. In reviewing the state of each hospital in respect of the general management and professional treatment of its inmates, it is their particular duty to see that due attention is paid to the separation, and if practicable, the total disjunction of the male and female branches of the establishment, and to the classification and assimilation of the patients. They are to take care that frequent recourse is had to the cold and hot bath; that unnecessary coercion is never used; that irons are not employed except in extreme cases, and then only manacles or light leg chains; and that where a preference is given to the strait waistcoat it is used with discretion, and is neither tied so tight nor kept on so long as to impede respiration, fret and chafe the patient, or prevent him from feeding himself or attending to personal cleanliness. I. H. Rules, No. 6.

Duties of superintending surgeons.

to see that the male and female patients are separated; that frequent recourse is had to baths; and that patients are not placed under undue restraint;

2336. The diet and clothing of the patients are to form principal objects of attention to the superintending surgeons, who will not fail to convey their animadversion to the surgeons, and through them to the magistrates, when it appears to them that the supplies in either of these branches are conducted with unnecessary and lavish expenditure on the one hand or undue and injudicious parsimony on the other. They are to observe that the hospitals are kept clean and comfortable; the wards pure and well ventilated; and the drains and necessaries frequently cleared out and washed; that the keepers and other servants are humane and attentive; and that in the general management and economy of the establishment nothing is wanting to that measure of comfort and happiness which is compatible with the deplorable state of the helpless beings composing it. I. H. Rules, No. 7.

to attend particularly to the diet and clothing of patients; to the cleanliness of the hospital; and the behaviour of the keepers.

2337. The surgeon is regularly to visit the hospital in the morning and evening of each day; and besides these stated periods, is to give his attendance at all other hours, in which it would seem to be required by any peculiarities in the cases of individual patients; during such visit he is to inspect every division and ward of the hospital, make himself acquainted with the state of all the patients, and issue such directions as may, under the circumstances of the moment, prove necessary. I. H. Rules, No. 14.

The surgeon to visit the hospital morning and evening; and to inspect the wards.

2338. On the 1st of each month, the surgeon is to transmit to the magistrate a return of the patients in the hospital drawn up agreeably to form No. 29 of appendix C. Reports of the same description, but specifying the variety of disease under which each patient labors, are likewise to be forwarded by the surgeon, in the beginning of every

Surgeons to furnish a monthly return.

month, to the superintending surgeon of the division, for the information of the medical board. I. H. Rules, No. 13.

Hospital registers and medical diaries to be kept up; and to be open to inspection by the magistrate, judge, and superintending surgeon.

2339. A regular hospital register and medical diary are to be constantly kept by the surgeon, in which he is to enter the name, sex, age, temperament, general constitution, and habits of each patient; the history, kind, and duration of his disease; its treatment and progressive condition; together with dates of admission, discharge, and death. In this journal the peculiar nature and course of the malady of each patient, and its exacerbations and remissions, are to be accurately described, and his general treatment both as to discipline and medicine fully detailed. Remarks are also from time to time to be entered on the change produced by any modification in the management, or change in the medicines employed in the several cases. Such alterations as may occur in the bodily health of the patients should likewise be noted; and where the latter suffers much under acute disorder, a daily report of its progressive changes should be entered. These journals are at all times to be kept open for the examination of the magistrate, the session judge, and the superintending surgeon. I. H. Rules, No. 15.

Diet, clothing, &c. how to be supplied.

2340. The diet, clothing, bedding, cots, cooking and water utensils, and all other necessaries, excepting wine and Europe medicines required for the patients, are to be supplied by native contractors or sircars appointed by, and in every thing subject to, the authority of the magistrates. I. H. Rules, No. 16.

Clothing, bedding, &c, to be of what description.

A sufficient stock of every article to be kept on hand.

2341. The articles of clothing, bedding, &c. used in the hospitals are, as far as possible, to be of the like sort and description for the male and female patients, as those generally employed by individuals of the same classes and rank under the ordinary circumstances of common life. A sufficient stock of every article is at all times to be kept on hand, to allow of frequent change and washing, and to admit of such occasional variations as alterations in the weather, or in the health of patients, may, in the opinion of the surgeon, seem to require. I. H. Rules, No. 17.

When fresh supplies of clothing, bedding, cots, &c. are required, how to be obtained.

2342. When fresh supplies of clothing, bedding, cots, charpoys, or other necessaries, are needed, an indent stating the number and description of each article is to be prepared by the surgeon and submitted to the magistrate, who on approval will sanction it and give orders for its being complied with. Upon the articles being delivered to the hospital, a receipt signed by the surgeon is to be granted to the person immediately employed in furnishing them. I. H. Rules, No. 18.

Diet how to be provided.

2343. The diet of the patients is to be provided in the same manner; and a list specifying the several articles and respective quantities of food required is to be daily made under the inspection of the surgeon, and given to the native purveyor who is to furnish them accordingly. I. H. Rules, No. 19.

Quality and quantity of food left to the discretion of surgeon.

2344. As it does not seem practicable to lay down any precise rules regarding kinds or qualities of food, which it may be proper to administer to the patients under all possible varieties of circumstances, the regulations of this department must in a great measure be left to the judgment and discretion of the medical officers in charge. It is however to be generally understood, that the articles chiefly expended should as nearly as possible approximate to the best sorts of those commonly used by persons of the same classes in

health; and that in all such cases proper and humane indulgence should be shewn to the peculiar habits and prejudices of individual patients. On occasion of bodily indisposition, the surgeon is always at liberty to vary the diet, and to order such extra articles as are requisite under the particular exigencies of each case. I. H. Rules, No. 20.

Surgeon to sign vouchers for articles received.

2345. At the end of every month a general list of all the articles of diet, clothing, bedding, &c. received during the month from the purveyor is to be made out, under the inspection of the surgeon, and signed and given in by him to the magistrate, who is to preserve it, as a voucher, by which the contractor's accounts of daily expenditure may, when presented for payment, be duly checked and authenticated. I. H. Rules, No. 21.

Supply of wine.

2346. The small quantities of wine, with which it may be considered necessary to supply the patients in cases of disease and debility, are to be Madeira of the description commonly used in the European hospitals under this presidency, and are in like manner to be furnished by the commissariat department upon indents presented by the surgeon, and bearing the counter-signature of the magistrate and superintending surgeon. The quantities used for each patient, and the reasons for administering it, are to be regularly entered in the hospital diary, and a statement of the total expenditure forwarded once every half year to the superintending surgeon. I. H. Rules, No. 22.

Europe medicines and apothecaries' utensils.

2347. The Europe medicines and apothecaries' utensils are to be supplied from the H. C. dispensary and depôts upon indents prepared by the surgeon, according to the customary form, and submitted through the usual channel for the approval of the superintending surgeon or medical board. In the rare instance in which surgical aid becomes necessary, the surgeon is to consider himself at liberty to employ the instruments furnished to him for the general medical duties of the station to which he is attached. I. H. Rules, No. 23.

Hospitals to be lighted up at night; and their wards, &c. to be kept clean; and the walls to be white-washed half-yearly.

2348. The hospitals are to be lighted up at night; and their cells, wards, areas, grounds, and walks kept clean, under the direction and superintendence of the surgeon, whose peculiar duty it is to see that in these, and in all other points connected with the purity, airiness, and neatness of the buildings, the utmost attention is paid to secure the comfort and welfare of the patients. The floors of the wards and verandahs are to be duly swept, washed, and scoured. The walls of each hospital and its various compartments are to undergo a thorough white-washing twice at least a year; and the doors, windows, and other wooden work are to be painted as often as occasion may require. I. H. Rules, Nos. 24 and 25.

Patients to be indulged with innocent amusements; and surgeon may make the necessary disbursements on this account.

2349. Long experience in the history and treatment of insanity having shewn, that much may be effected towards the recovery of those afflicted by the healthful employment and exercise of the mind, and the careful banishment of its habitual vicious trains of thought, it is expected that the surgeons of these establishments will devote much of their attention to this important branch of curative means; and that by indulging the unhappy objects placed under their care with innocent games and other harmless means of recreation, they will endeavour to gain their confidence, and to reclaim them to the enjoyment and exercise of reason. The means best fitted for the useful occupation and amusement of the patients as adapted to native habits must be almost entirely left to the good sense and

discrimination of the medical officer, who is to consider himself entitled to make such disbursements on this account as may appear necessary and proper. These disbursements are to be made through the medium of the purveyor, and carried to account in the general contingent bill. I. H. Rules, No. 26.

Rule for admission of patients.

2350. Individuals are to be admitted patients into the insane hospitals upon the recommendation of the magistrate of the station, or of the session judge; and without an order transmitted from either of those authorities, the medical officers in charge are in no case to receive or confine a person supposed to labor under mental derangement. In the event of a person being sent from any of the neighbouring zillahs, under circumstances justifying his detention, the magistrate or senior civil servant on the spot is to forward with him a certificate of supposed insanity, which, when countersigned by the magistrate of the station, will be the surgeon's warrant for receiving or confining him. Magistrates are also to forward a descriptive roll in duplicate, in the form No. 28 of appendix C, with the column of remarks filled up by the surgeon of the district in those cases in which the patient has been attended by him. I. H. Rules, No. 10; and C. O. Nos. 82 of vol. 2, and 104 of vol. 3.

Rule for discharge of patients.

2351. The surgeon is to consider himself at liberty to discharge patients from the hospital, without reference to the magistrate, only in cases in which he has reason to believe the cure to have been perfectly established, and of the peculiarities of which he has had sufficient experience to warrant the opinion that a sudden or dangerous relapse is not to be dreaded. In cases of convalescence or of quiet or harmless disease, and generally in those in which, although the recovery is imperfect, the patient may seemingly be set at large without danger to society, the surgeon may, when he sees meet, represent the circumstance to the magistrate, who is to grant a discharge upon receiving due security from the relatives or friends of the insane person for his future peaceable behaviour.(a) I. H. Rules, No. 11.

Magistrate never to discharge without the consent of the surgeon.

2352. The magistrate is under no circumstances to consider himself entitled to release a patient without having previously obtained the surgeon's opinion upon the safety of so doing; should any difference of opinion arise between them on questions of this nature, they are to refer the point, when practicable, to the superintending surgeon, whose judgment and decision is, unless either party think it right to have recourse to reference to the medical board, to be considered final as to the immediate discharge or further detention of the individual. I. H. Rules, No. 12.

Establishment of servants allowed.

2353. Attached to every hospital there is to be, upon the monthly salary of sixteen rupees, a native doctor or compounder, who is constantly to reside on the spot and to be immediately subject to the orders of the surgeon. At the head of each establishment is to be a darogah or head native keeper on a monthly salary of ten rupees, who, under the control and direction of the medical officers, is to have the general management of the patients, and to possess authority over the other servants. In the male branch of the hospital there is to be for every thirty patients one naib jemadar or deputy keeper on a salary of

(a) This rule of course does not apply to the case of persons, who, being charged with the commission of a penal act, have been sent to the insane hospital on proof of insanity, either when apprehended, or at the time of trial; for in such case the accused is to be tried upon his recovery. *See paras.* 98 *et seq.*

five rupees; and for every eight patients a peon, coolie, or nigaban at four rupees: there is to be one mehter on wages of three or four rupees for every twenty patients; and one naie, or barber, at three rupees for every fifty patients. For the women's department there is to be a head female keeper at six rupees per month, one female coolie at four rupees for every eight patients, and one mehteranee for every twenty patients. There are also to be common to both branches of the establishment, a cook at five rupees wages for every forty patients; a bheesty at four rupees for every forty patients; one guala or Hindoo watercarrier at four rupees for carrying water to the cookroom, for the use of the Hindoos; and one dhobie at five rupees for every fifty patients; one hurkarrah at four rupees is to be allowed for carrying messages; and, when the airing grounds are extensive, one or even two gardeners at four rupees each per month. It is conceived, that the foregoing establishment for servants is calculated upon a scale sufficiently liberal to provide, under ordinary circumstances, for the safe custody of the patients and due attendance on their persons; but the magistrate is at liberty, in communication with the surgeon, to augment and diminish it, or to vary its distribution when such change appears necessary for the benefit of the patients. I. H. Rules, No. 27.

Magistrate in communication with surgeon may augment or diminish it.

2354. The salaries of the native establishment of each hospital are to be fixed by the magistrate; and the whole of the servants of every description maintained in it, are to be mustered for inspection at such times as he may choose to direct. Every description of servants attached to the hospital are placed under the control and orders of the medical officers; and without instructions from them, are in no case to have recourse to irons, the strait waistcoat, or other severe restraints. It is the surgeon's duty to be careful that the patients are never struck; that the keepers invariably abstain from all acts of oppression, and unnecessary severity, and under every circumstance behave with mildness, forbearance, and humanity. In instances of gross misconduct, the surgeon is empowered immediately to discharge the offender; but in ordinary cases he is to represent the circumstances to the magistrate, and obtain his consent, previously to making any change in the state of the establishment. I. H. Rules, No. 28.

Payment and control of native servants.

Treatment of patients by servants

Rule for discharge of servants.

2355. The expenses attending the support of each of the insane hospitals, including the monthly allowances granted to the surgeon, and to the native officers on the establishment, are to be charged in separate monthly contingent bills, to be submitted in the customary manner by the magistrate for audit and for the sanction of government. An annual account of the total charge for each establishment is likewise to be furnished by the magistrate for the information of government; and all expenses of every description incurred on account of these hospitals are to be charged under the head of charges general in the general department. I. H. Rules, No. 29.

Expenses of hospitals how to be charged.

2356. The following returns are to be furnished annually to government by the magistrate in the form No. 30 of appendix C. viz. a table of the total expenditure in the insane hospital, showing also the ordinary daily allowance for each patient; a return of the servants attached to the institution; and a statement of the miscellaneous contingencies incurred.(a)

Annual statements to be furnished by the magistrate to government.

(a) I cannot find the order under which these returns are furnished; but have taken the forms from those actually in use.

BOOK III.

OF THE MISCELLANEOUS DUTIES OF THE MAGISTRATE.

CHAPTER I.

OF FERRIES, AND FERRY FUNDS.

2357. The immediate superintendence of the public ferries is vested in the magistrates; and the collectors of revenue are to refrain from exercising any interference with them. Reg. VI. 1819, sect. 2, cl. 2.

Immediate superintendence vested in magistrates,

2358. The acts of the magistrate in the *management* of ferries are subject to the control of the superintendent of police; and all appeals from orders in such matters are to be received and disposed of exclusively by that authority. C. O. No. 29 of vol. 3. Const. No. 1144.

subject to the control of the superintendent of police.

2359. No ferries are to be considered public ferries, except such as are situated at or near the sudder stations of the several magistrates, or such as intersect the chief military routes, or other much frequented roads, or such as from special considerations it appears advisable to place under the more immediate management of the magistrates. Reg. VI. 1819, sect. 3, cl. 1.

What ferries are to be considered public ferries.

2360. The government reserves to itself the power of determining from time to time what ferries are, under the preceding rule, to be deemed public ferries, and as such are to be subject to the immediate control of the magistrates; and no magistrate is, without previous authority from government, to assume the management of any ferry which has not been previously subjected to assessment. Reg. VI. 1819, sect. 3, cl. 2.

The magistrate is not to assume charge of any ferry, as coming within the above rule, without the sanction of government;

2361. Magistrates are to report, through the superintendents of police, for the information and orders of government, when in their judgment ferries should, under the foregoing rules, be considered to be public ferries. Reg. VI. 1819, sect. 3, cl. 3.

but is to report to to government.

2362. The power of appointing proper persons to the charge of the public ferries is vested in the magistrates, who are authorized, from time to time, to issue such orders as they judge expedient for limiting the rates of toll to be levied at each ferry, for regulating the number and description of boats to be maintained, for preventing exactions, and generally for promoting the efficiency of the police, and the safety and convenience of the community. Reg. VI. 1819, sect. 4, cl. 1.

Magistrate to appoint proper persons to the charge of the public ferries; and to regulate the tolls, boats, &c.

2363. On proof of any wilful breach of these rules, or of other misconduct on the part of the manjees or other persons in charge of the public ferries, the magistrates are empowered (independently of any punishment to which the parties subject themselves

Magistrate to remove such persons on proof of misconduct

under the general regulations) to remove such individuals, and to appoint others in their room. Reg. VI. 1819, sect. 4, cl. 2.

What persons are exempted from the payment of tolls at public ferries;

2364. The manjees, or other persons who are vested with the charge of public ferries, are to engage to cross free of toll the troops of government with their baggage and military stores, as well as all police and other native officers of government, who are actually employed in the public service. Reg. VI. 1819, sect. 4, cl. 3.

and at all ferries.

2365. All officers of government are exempted from the payment of ferry tolls within the division to which they belong, when they are moving in those divisions on the public service; and any officer not entitled to exemption under this definition of the rule, who refers a claim to exemption based on the principle which the rule is intended to establish, is to refer his claim, for special consideration and orders, to the department to which he belongs. C. O. No. 208 of vol. 3. C. O. Sup. Pol. L. P. No. 9 of 1845.

Lists of ferries to be constantly exhibited.

2366. A list of all public ferries, bearing the signature of the magistrate, is to be constantly stuck up in some conspicuous place in his cutchery, and in that of the collector of the district, and likewise in the thana within the jurisdiction of which they are situated. Reg. VI. 1819, sect. 5.

Private boats not to ply for hire in the vicinity of public ferries; but attention to be paid to claims for compensation.

2367. Such ferries exclusively belong to government; and no person is to be allowed to employ a ferry boat plying for hire at or in their immediate vicinity, without the previous sanction of the magistrate:—provided however, that due attention is to be paid to all claims for compensation which are preferred by individuals for any loss sustained by them, in consequence of the extension of the authority of government to ferries hitherto under their private management, and which have not been heretofore let in farm, or held khas, or otherwise deemed subject to assessment on account of government. Reg. VI. 1819, sect. 6, cl. 1.

Plying private boats in the vicinity of public ferries is a misdemeanor.

2368. A contravention of the above rule, by parties contrary to order plying their boats in the vicinity of a government ferry, is a misdemeanor punishable by the magistrate under the general powers vested in him by the provisions of sect. 19. Reg. IX. 1807. Const. No. 1305.

Claims for compensation to be reported to government.

2369. Claims of the above nature are to be inquired into by the magistrate, and his opinion on the merits of each case is to be reported, through the channel of the superintendent of police, for the consideration and orders of government. Reg. VI. 1819, sect. 6, cl. 2.

General objects to which the magistrate is to attend in assuming charge of public ferries.

2370. In assuming the management of public ferries, the general objects of the magistrates are to be, the maintenance of an efficient police, the safety and convenience of travellers, the facility of commercial intercourse, and the expeditious transport of troops. For the above objects they are to be careful to provide or cause to be provided safe and commodious boats; they are to fix the rates of toll on a very moderate scale, in no case exceeding, without an indispensable necessity, the rates which prevailed previous to the enactment of Reg. XIX. 1816[a]; they are to adjust the modes of payment so that the tolls may bear as lightly as possible on the poorer classes of the community; and by

(a) The regulation by which the management of ferries was first entrusted to officers of government.

leaving a fair profit to the individual, who is chosen for the immediate charge of the ferries, they are to endeavour to secure as far as possible the services of respectable and competent persons. Reg. VI. 1819, sect. 7, cl. 1.

The above objects to be first attained; and surplus collections how to be disposed of afterwards.

2371. No collections are to be taken on account of government from the proceeds of any ferry, until the above objects are fully secured; and if in any case there remains a clear surplus profit, after providing adequately for those purposes, the amount collected is to be applied solely to the furtherance of similar objects, such as the repair or construction of roads, bridges, and drains, the erection of serays, or other works of a like nature. Reg. VI. 1819, sect. 7, cl. 2.

Rule of proceeding when ferries yield a surplus revenue.

2372. In cases of the latter description, viz. those in which the receipts of any ferry are sufficient to afford a surplus revenue as above mentioned, the magistrate, having previously received special authority from government in that behalf, may and is to require the persons holding or applying for the charge of the ferry, to enter into engagements for the payment, by monthly or quarterly instalments, of such a sum of money as with reference to the estimated surplus appears justly demandable without risking the primary objects above indicated; and if any person in charge of the ferry refuses to enter into an engagement as aforesaid, and does not assign sufficient cause for such refusal to the satisfaction of the magistrate, it is competent to such officer to transfer the charge of the ferry to any other respectable and competent person:—provided however that no person in charge of a ferry, who otherwise conducts himself to the magistrate's satisfaction, is to be removed from his charge under the above rule excepting at the expiration of the Bengal or Fussily year, according to the era current in the province. Reg. VI. 1819, sect. 7, cl. 3.

Mode in which collections are to be paid, to be regulated by government.

2373. The mode in which collections made under this section are to be paid, whether into the treasury of the magistrate or collector, or any other public officer, is to be determined by the orders of government, and adjusted with the party by the magistrate at the time of giving him charge of the ferry or ferries entrusted to him:—provided however, that as a general rule all persons in charge of ferries subject to the payment of a rent are, on discharging any instalments, to receive and to be directed to require receipts for the amount, which are to be countersigned by a European officer of government. Reg. VI. 1819, sect. 7, cl. 4.

Farmers of public ferries cannot underlet them.

2374. A person holding the farm of a public ferry is not authorized to underlet it without the sanction of the magistrate (a). A summary suit by such farmer against his kutkeenadar would not be cognizable by the collector under Reg. VIII. 1831*, the mode of proceeding being expressly provided, in such cases, by the above rules. Const. No. 713.

* *i. e. by a summary suit before the collector.*

Security from persons in charge of public ferries.

2375. The magistrate is competent to take security for the good behaviour of persons vested with the charge of public ferries; and in the case of persons who, under the provisions of the foregoing section, enter into an engagement for the payment of a yearly rent, it is likewise competent to him to require adequate security for the punctual payment of the amount, as it becomes due. Reg. VI. 1819, sect. 8.

(a) It was observed by the western court, that "the regulation cited (Reg. VI. 1819) does not appear to contemplate the underletting of public ferries either with or without the magistrate's sanction."

Pottahs and kabooliyuts need not be on stampt paper.

2376. Leases and counterparts granted to and taken from the farmers of ferries need not be written on stampt paper, as they come within the exemption in schedule A, Reg. X. 1829, of conveyances in which government is a party. Const. No. 1111.

Persons in charge of public ferries may always relinquish them on giving ten days' notice.

2377. Any person in charge of a public ferry, whether subject to the payment of rent or not, is at liberty to relinquish the charge on giving 10 days' notice to the magistrate, and on paying any arrears that are due:—provided, however, that it is in such case competent to the magistrate to require any person who so relinquishes the charge of a ferry, or who is removed from such charge, to transfer the boats belonging to the ferry to the persons, who are appointed to succeed him, at a fair valuation, or to retain the boats until others can be provided, making a suitable compensation to the owner. Reg. VI. 1819, sect. 9.

Arrears how to be recovered from defaulters.

2378. If any person having charge of a ferry, subjected to the payment of a yearly rent, fails to discharge the amount as it becomes due, he is liable to immediate removal; and the magistrate, after ascertaining the arrear and certifying the default, is to proceed to the recovery of the amount from the party, and his surety, in the manner prescribed by sect. 7. Reg. XVIII. 1817* for the recovery of public money embezzled by native officers, giving at the same time a liberal consideration to any pleas, which the party urges in explanation of the default. Reg. VI. 1819, sect. 10.

*v. paras. 1981 *et seq.*

In such cases the appeal does not lie to the session judge.

2379. It is not competent to a session judge to receive an appeal from the orders of a magistrate for the realization of ferry balances. C. O. No. 39 of vol. 3.

Magistrate is always to reserve to himself the power of reducing tolls, or extending exemptions.

2380. All persons vested with the charge of public ferries, whether paying any rent or not, are, on accepting the situation, to be distinctly apprized, that the magistrate reserves to himself the power of reducing the rates of toll, or extending the exemptions from the payment of it, at such times and in such manner as appears proper with a view to the public good :—provided, however, that in the event of any such measures being adopted, the party in charge of the ferry may relinquish the charge; and the magistrate is in such case to purchase from him at a fair valuation, or to cause his successor so to purchase, all boats belonging to the ferry with all articles thereunto appertaining. Reg. VI. 1819, sect. 11.

In such case magistrate to state whether he intends to reduce the rent.

2381. Provided also that whenever a magistrate adopts such measures in regard to any ferry for which a rent has been required from the person vested with the charge of it, he is, in communicating his orders to the party aforesaid, at the same time to apprize him, whether he designs to allow any, and what reduction in the stipulated rent. Reg. VI. 1819, sect. 12, cl. 1.

Rule in such cases, if the person in charge desires to relinquish it.

2382. If the person in charge of the ferry is not willing or able to pay the rent so fixed by the magistrate, he is nevertheless immediately to carry the magistrate's order into effect, and is to state in his reply to those orders the amount of rent which he is willing to continue to discharge. Should the offer of the party in charge of the ferry appear inadequate, it is competent to the magistrate to remove him and to place another person in charge of the ferry, purchasing the boats and their appurtenances as aforesaid; but the person so removed is to be required to pay for the days during which he retains charge,

subsequently to the date of his reply to the magistrate's order, a proportionate rent calculated at such rate only as he has tendered. Reg. VI. 1819, sect. 12, cl. 2.

Ferries not made public under the above rules.

2383. The foregoing rules are intended to apply exclusively to those ferries, which are declared to be public ferries; with regard to all other ferries, the magistrates are not to interfere with them, further than is necessary for the general maintenance of the police, and for the safety of passengers and property. Reg. VI. 1819, sect. 13, cl. 1.

Penalty for accidents to life or property in consequence of the neglect of the manjees

2384. Provided however that if any person is drowned or exposed to imminent danger, or if any property is lost or damaged, by the oversetting or sinking of a ferry boat, and it is established on inquiry before the magistrate, that the boat was overloaded with passengers or property, or was insufficiently manned, or was out of repair at the time of the accident,—the manjee of the ghat or boat, if duly convicted of permitting his boat to be overloaded, or to be insufficiently manned, or out of repair, is liable to such punishment, as the magistrate thinks proper to impose not exceeding imprisonment for 6 months, or a fine of 200 rupees. Reg. VI. 1819, sect. 13, cl. 2.

Annual statement of ferries, and surplus proceeds

2385. An annual statement made up to the 1st of January of each year is to be forwarded by the several magistrates to the superintendents of police, exhibiting the number of public ferries in each district, the amount of the net assessment realized from such of them as are subject to assessment, and the purposes to which the amount so realized has been appropriated under cl. 2, sect. 7 of this Regulation. In submitting to government the results of those statements, the superintendents of police are to offer any suggestions which appear to them calculated to facilitate or to improve the practical operation of the system. Reg. VI. 1819, sect. 14.

Ferry fund committees, lower provinces.

Objects of appointment.

Formation, and nomination of members.

2386. The following rules were enacted by the government of Bengal for the appropriation of the surplus ferry collections. *Rule* 1. Committees shall be formed in each district for the management of the surplus ferry funds collected under Reg. VI. 1819, and applicable under cl. 2, sect. 7 of that enactment for the promotion of the convenience and safety of travellers, and the facility of commercial intercourse. *Rule* 2. Each district committee shall consist of not more than nine persons, of whom three shall form a quorum. The magistrate of the district and the executive officer of the division are to be *ex-officio* members of the committee. The remainder shall in the first instance be appointed by government upon the recommendation of the superintendent of police, and shall consist as well of persons out of the service, natives and Europeans, as of those who are connected with it. Future vacancies to be filled up by the superintendent of police, subject to the approbation of government. *Rule* 3. The superintendent of police shall be a member of the local committees, and preside at the meetings whenever he is present. He shall always have a casting vote, whether absent or present, when opinions are divided. *Rule* 4. The whole country is divided into unions; the surplus ferry funds in these are to be thrown together, and divided between the several districts which compose them. *Rule* 6. At the close of each official year, the accountant will ascertain what is the amount of surplus ferry funds in each union during the preceding year, and distribute the total equally amongst the several districts comprised in it; the government reserving to itself the power of making a different allotment of

Superintendent of police to preside, and to have the casting vote.

Division of the country into unions.

Annual apportionment of surplus funds.

Book of minutes to be kept, and to be open to public inspection.

the funds, should such alteration hereafter appear expedient. *Rule* 7. Each committee will keep a book, in which will be entered minutes of all its proceedings and resolutions. The proceedings of each meeting shall be attested by the members present. This book shall always be open to the inspection of any person who may be desirous of perusing it.

Reference on any point may be made to government.

Rule 8. Any member of a committee shall have the power to demand a reference to the government through the superintendent of police on any point on which he may differ from the majority.

Power of the superintendent of police to sanction expenditure.

Rule 9. The superintendent of police, on the recommendation of the committee, is competent to sanction establishments to the amount of 150 rupees per mensem, and estimates for works to the extent of 500 rupees on any one work. Larger undertakings than the above must be submitted through the superintendent of police to the government for approval, the opinion of the executive engineer being previously recorded in each case.

Disbursements how to be made and credited.

Rule 10. The disbursements will be exhibited as heretofore in the magistrate's accounts, and passed under the rules applicable to such cases. The magistrates will pay on an order signed by the members of the committee, and the authority of the superintendent of police.

Retrospective limit of these rules.

Rule 11. These rules relate exclusively to surplus funds accruing after the 30th April 1840. No surplus, which may have accrued in any district before that date, can be expended without the express sanction of the government of India. *Bengal* Govt. Notification, November 8, 1841.

Apportionment of balance remaining at the close of the year.

2387. The unexpended balances of each district at the close of the year are to be carried separately to the credit of each committee, instead of the whole balances of the districts forming one union being added to the funds of the year available for that union, and then divided amongst the districts comprising it. C. O. Sup. Pol. L. P. No. 17 of 1844.

Suggestions for management of ferries.

2388. The following "suggestions for the better management of the ferries by the help of the district committees" were circulated with the approbation of Government.

Statement to be laid before the committee.

(I.) The magistrate is to place before the committee a statement of the number of the public ferries with the rents derived from each; and the members of the committee are to be requested to furnish him with information regarding other ferries, which under the provisions of Reg. VI. 1819 ought to be declared public.

Individual members to superintend the ferries near to their residences.

(II.) The members are to be requested to superintend the several ferries near to their residences, affording to the magistrate their aid in checking extortion on the part of the holders of the ferry, as well as in keeping up good boats and efficient crews, reporting to the magistrate either individually or through the committee any abuses which exist.

Arrangements for ferries to be submitted to committee for approval.

(III.) The magistrate, before concluding arrangements for the ferries, is to place before the committee the offers made to him, the numbers of boats, and the strength of the crews to be kept up, and the rates of toll at each ferry, together with all other circumstances for their approval; after obtaining which he is to conclude the engagements and forward them to the office of the superintendent of police,—the members of the committee having of course the power to submit any objections through their secretary or the magistrate to the same authority.

Duration of leases of ferries.

(IV.) The magistrate and the committee are particularly requested to take into consideration the advantages to be gained by leasing the ferries for longer periods than from year to year. If a reasonable rent is procured, such a measure will encourage the farmer or manager to lay out capital in procuring good boats, and give him a greater interest in his farm; and will have a tendency to prevent the extortion now practiced for the sake

of obtaining as much profit as possible within the year. The leases might be given for three years at the least. (V.) All estimates of expenses for boats, ghats, &c. are to be submitted to and approved by the committee, and sent through them to the superintendent of police for sanction. C. O. Sup. Pol. L. P. No. 11 of 1842.

Estimates of expenses to be submitted through the committee.

2389. The expense of providing boats, rope-bridges, and other means of crossing rivers and nullahs by the public mail, is fairly chargeable to the ferry fund. The committees are therefore to take into consideration the lines of post road within their districts, and to adopt measures for the speedy and secure transit of the public mail over such obstacles as occur in the road. C. O. Sup. Pol. L. P. No. 18 of 1842.

Expenses chargeable to the ferry fund.

2390. Before any part of the proceeds of the ferries is applied to other purposes, the ferries themselves should be made in all respects secure; boats suited to the local circumstances of the rivers, on which they are employed, should be provided and maintained in a state of efficiency; and convenient places built for travellers and merchants, who are often unavoidably delayed at them. For these purposes there should certainly be efficient protection afforded by proper police establishments on the spot paid out of the proceeds of the ferries; and, if possible, there should be made some safe and convenient place of resort of the nature of a seray, especially at the large and more important ferries. The superintendent of police objects to the employment of single police officers at out-posts. Govt. order *Bengal* May 2, 1837. C. O. Sup. Pol. L. P. No. 18 of 1844.

Primary object of committees to make the ferries secure, and to provide accommodation thereat for travellers.

2391. A report is to be furnished half yearly to the superintendent of police by the committee of the works in progress under their supervision, in the form No. 16 of appendix F. C. O. Sup. Pol. L. P. No. 2 of 1844, and No. 2 of 1846.

Half yearly report of works under the supervision of committees.

2392. The ferry fund committees cannot expect, in addition to the annual surplus funds, that the convicts should be placed at their disposal, which would be equal to a further large money assignment. C. O. Sup. Pol. L. P. No. 766, April 2, 1844.

The committees are not entitled to convict labor free of expense.

CHAPTER II.

OF LOCAL IMPROVEMENTS.

SECTION I.

OF LOCAL AGENCIES.

2393. The general superintendence of all lands granted for the support of mosques, Hindoo temples, colleges, and for other pious and beneficial purposes; and of all public buildings, such as bridges, serays, kuttras, and other edifices; is vested in the boards of revenue. Reg. XIX. 1810, sect. 2.

Superintendence of lands endowed for certain purposes is vested in the board of revenue.

The board is to be careful that the endowments are duly appropriated, and the buildings kept in repair.

2394. It is the duty of those boards to take care that all endowments made for the maintenance of establishments of the above description are duly appropriated to the purpose for which they were destined by the government or individual by whom such endowments were granted. In like manner it is the duty of those boards to provide, with the sanction of government, for the due repair and maintenance of all public edifices,(a) which have been erected at the expense of either the former or present government or of individuals; and which either at present are or can conveniently be rendered conducive to the convenience of the community. Reg. XIX. 1810, sect. 3.

Buildings decayed or useless how to be disposed of.

2395. In those cases however in which any of the buildings in question have fallen to decay, and cannot from that or other causes be conveniently repaired, or are not calculated, if repaired, to afford any material accommodation to the public, the boards are to recommend that they be sold on the public account, or otherwise disposed of, as may appear most expedient. Reg XIX. 1810, sect. 4.

The board is to be careful that such lands or buildings are not appropriated to private purposes.

2396. Under the foregoing rules it is of course incumbent on those boards to prevent any lands, which have been granted for the support of establishments of the above description, from being converted to the private use of individuals, or appropriated in any other mode contrary to the intent and will of the donor; and likewise to prevent all public edifices from being usurped by individuals, and falling into the possession and exclusive use of private persons. Reg. XIX. 1810, sect. 5.

Estimates of necessary repairs to be submitted to government.

2397. Whenever the boards of revenue are of opinion that any of the above-mentioned edifices [*i. e.* mosques, Hindoo temples, colleges, and other buildings appropriated to pious and beneficial purposes] require repair, they are to obtain the necessary estimates of the expense required for the execution of the work, and forward them to government for its approval. Reg. XIX. 1810, sect. 6.

Superintendence of escheats vested in board of revenue.

2398. The general superintendence of all nuzzool property or escheats is likewise vested in the boards of revenue, who are to inform themselves fully, through the channel hereafter mentioned, of all property of that description, and to report to government whether it should in their opinion be sold on the public account, or in what other mode it should be disposed of. Reg. XIX. 1810, sect. 7.

The above powers are vested in the commissioners of revenue, subject to the authority of the board of revenue.

2399. The commissioners of revenue are to exercise the powers vested in the board of revenue in regard to the general superintendence of nuzzool property or escheats, subject to the authority of the sudder board, who are to inform themselves of all property of that description by means of the local commissioner, and to report to government, whether it should, in their opinion, be sold on account of government, or otherwise disposed of. The general superintendence of all lands granted for pious or beneficial purposes, and of the public edifices specified above, is in like manner vested in the commissioners, to whose immediate orders and control the local agents are to be subject. Rules of practice for commissioners of revenue, Nos. 49 and 50.

(a) "The general superintendence of all lands assigned as endowments for the maintenance of bridges, serays, and kuttras, shall remain as heretofore vested in the board of revenue and board of commissioners; but such parts of Reg. XIX. 1810, as require that those boards should provide, with the sanction of government, for the due repair of public edifices of this description, are hereby rescinded." Reg. XVII. 1816, sect. 16. They are now placed under the control of the superintendents of police; see paras: 2412 *et seq.*

2400. To enable the boards of revenue the better to carry into effect the duties entrusted to them by this regulation, local agents are appointed in each zillah, subject to the authority, control, and orders of those boards respectively. Reg. XIX. 1810, sect. 8.

Local agents appointed for these purposes under the board of revenue.

2401. The collector of the zillah is *ex-officio* one of those agents, with whom the government is to unite such other persons, whether members of the public services, or otherwise, as may from time to time be judged expedient. Reg. XIX. 1810, sect. 9, Act XXXVIII. 1837.

Collector is *ex-officio* one of the agents, and government to appoint others.

2402. By order of government all magistrates are *ex-officio* members of local agencies. C. O. Sup. Pol. L. P. No. 9 of 1841.

Magistrate is *ex-officio* a local agent.

2403. In cases in which it becomes necessary, under these provisions, to institute an investigation into the appropriation of the funds assigned for the support of public institutions, the local agents are authorized, if it appears expedient, to convene a committee of natives of respectability, willing to undertake the duty, and of the proper persuasion according to the nature of the institution or endowment to which the inquiry has reference, to conduct the investigation under their superintendence and control. They are further competent to exercise their discretion in employing the agency, or availing themselves of the aid, of respectable natives, whom they find willing to assist in the general administration of the functions committed to them, and to determine the nature and extent of the interference which such persons are to exercise. C. O. S. B. R. *L. P*, No. 52, February 4, 1820.

The local agents may avail themselves of the aid and employ the agency of respectable natives.

2404. Under the above provisions, it is of course the duty of the agents to obtain full information from the public records, and by personal inquiries, respecting all endowments, establishments, and buildings of the nature of those above described, and of all nuzzool property and escheats; and to report to the commissioner any instances in which they have reason to believe that the lands or buildings are improperly appropriated; being in all cases careful not to infringe any private rights, or to occasion unnecessary trouble or vexation to individuals. Reg. XIX. 1810, sect. 10.

Such agents to obtain information regarding such endowments, &c, and to report on them.

2405. Officers of government are not to interfere with endowments for the maintenance of institutions purely religious without an application from the heads of the community connected with or interested in the institutions. C. O. S. B. R. *L. P*, No. 497, November 6, 1838.

Endowments purely religious not to be interfered with.

2406. The agents were required to ascertain and report the names, together with other particulars, of the (then) present trustees, managers, or superintendents of the several institutions, foundations, or establishments above described; whether under the designation of mootuwullee or any other; and by whom and under what authority appointed or elected; and whether in conformity to the special provisions of the original endowment and appropriation by the founder, or under any general rule or maxim applicable to such institutions and foundations. Reg. XIX. 1810, sect. 11.

The agents were required to ascertain the names, &c. of the then trustees, or managers, and by whom appointed.

2407. The local agents are to report all vacancies and casualties which occur, with full information of all circumstances, to enable the commissioner and board to judge of the pretensions of the person or persons claiming the trust; particularly whether

The agents are to report all vacancies with full information as to the pretensions of claimants.

the succession has been heretofore by inheritance in the line of descent; or whether the successor has been in former instances elected, and by whom; or whether he has been nominated by the founder, or his heir or representative, or by any other individual patron of the foundation, or by any officer or representative of government, or directly by the government itself. Reg. XIX. 1810, sect. 12.

The agents are to recommend fit persons when the nomination is vested in or devolves upon government.

2408. In those cases in which the nomination has usually rested with the present or former government, or with a public officer, or of right appertains to government in consequence of no private person being competent and entitled to make sufficient provision for the succession to the trust and management, it is the duty of the local agents to propose for the approval and confirmation of the superior authorities a fit person or persons for the charge of trustee or manager and superintendent, duly attending to the qualifications of the person selected, and to any special provisions of the original endowment and foundation, and to the general rules and known usages of the country applicable to such cases. Reg. XIX. 1810, sect. 13.

The board is to appoint such persons, or to make such other provision for the trust as is deemed right.

2409. On the receipt of the report and information required above, the board of revenue is either to appoint the person or persons nominated for their approval; or is to make such other provision for the trust, superintendence, and management, as may be right and fit with reference to the nature and conditions of the endowment; having previously called for any requisite further information from the local agents. Reg. XIX. 1810, sect. 14.

Individuals deeming themselves injured by orders passed under this regulation may sue for the recovery of their rights, or for damages.

2410. Nothing contained in this regulation is to be construed to preclude any individual, who conceives that he has just grounds of complaint on account of any orders which are passed by any of the above-mentioned authorities, with respect to the appropriation of any lands or buildings of the nature of those above described, from suing in the mode and form prescribed by the regulations, where government or public officers are parties; or under the general provisions of the regulations, if the suit is brought against a competitor, or other private person, for the recovery thereof in the regular course of law, or for compensation in damages for any loss or injury supposed to have been unduly sustained by him. Reg. XIX. 1810, sect. 15.

Specification of the objects of this regulation.

2411. It is to be clearly understood that the object of this regulation is solely to provide for the due appropriation of lands granted for public purposes agreeably to the intent of the grantor, and not to resume any part of the produce of them for the benefit of government. In like manner it is fully intended that all buildings erected by the former or present government, or by individuals for the convenience of the public, should be exclusively appropriated to that purpose, with the exception of such as have fallen to decay, and cannot from that, or any other cause be conveniently repaired, or which under existing circumstances can no longer contribute to the accommodation of the community. Reg. XIX. 1810, sect. 16.

SECTION II.

OF PUBLIC WORKS.

2412. The superintendents of police are to exercise a general control over the public roads, bridges, serays, and kuttras, within the limits of their respective jurisdictions. Reg. XVII. 1816, sect. 17, cl. 1.

General control of superintendent of police over roads, &c.

2413. Whenever the local magistrates are of opinion that any works of the description specified in the preceding clause are necessary in the cities or zillahs subject to their authority, they are to communicate their sentiments upon the subject to the superintendent of police, instead of addressing themselves directly to government. Reg. XVII. 1816, sect. 17, cl. 2.

Magistrate is to communicate with him regarding such works.

2414. On receipt of communications of the description above-mentioned, the superintendents of police are to consider not merely the local advantages which may attend the proposed works, but likewise their tendency to facilitate the communication between the several districts, and their general utility, whether in the promotion of the commercial or common interests of the country at large. Reg. XVII. 1816, sect. 17, cl. 3.

What points the superintendent is to consider, in regard to such works;

2415. The superintendents of police are likewise to ascertain how far the labor of the convicts confined in the several districts, within their respective jurisdictions, can be employed in the execution of the proposed works without withdrawing them from other works of equal or greater utility. Reg. XVII. 1816, sect. 17, cl. 4.

and how far the labor of convicts is available;

2416. The magistrates are to furnish the superintendents of police with such information as is required by such officers in regard to the employment of the convicts and the state of the public works. Reg. XVII. 1816, sect. 17, cl. 3.

the magistrate supplying the necessary information.

2417. Whenever it is necessary, under the orders of government, to collect any number of convicts together for the execution of public works, and such convicts cannot be supplied from the sudder station of the district in which their services are required, the superintendents of police are to make application to government, stating the number of prisoners required, the work on which it is proposed that they should be employed, and the districts from which in their opinion they can be most conveniently supplied; and the government is to determine on the expediency of the removal of the convicts, and to issue such instructions on the subject to the local magistrates as is deemed proper. Reg. XVII. 1816, sect. 18.

Steps to be taken if convicts are required from other zillahs for such works.

2418. In cases in which the superintendents of police are of opinion, whether on consideration of reports from the local magistrates, or from other sources of information, that any public works, of the description specified above, should be undertaken at the expense of government, they are to ascertain from the local authorities, and as far as practicable from professional persons, the expense to which government would be subject in the execution of the proposed works, and are to submit a full and comprehensive report on the subject to government, containing the necessary information in regard to the utility of the work, together with an estimate of the probable expense attending its execution. Reg. XVII. 1816, sect. 19, cl. 1.

Report to be made if the superintendent considers that such works should be undertaken at the expense of government,

stating what funds are available for such purposes.

Expensive works not to be recommended unless specially useful.

2419. In submitting reports of the above description, the superintendents of police are to be careful to ascertain whether any means can be devised for defraying the expense of the proposed works otherwise than from the general funds of government; and they are to refrain from recommending any expensive undertakings, except in cases which promise to be attended with more than ordinary convenience and advantage. Reg. XVII. 1816, sect. 19, cl. 2.

SECTION III.

OF LAND REQUIRED FOR PUBLIC PURPOSES.

If there is any hinderance to purchase of such land, the officer appointed by government is to notify by proclamation the situation and extent of the land required, and to call upon all claimants thereto to appear to state their claims, the compensation they would require, and their objections, if any, to part with the land.

2420. Whenever it appears necessary or expedient to appropriate the whole or part of any individual's landed estate, or other immovable property, or any thing thereunto belonging, for the construction of a public road, building, canal, drain, jail, or for any other public purpose, then, if there is any hindrance to the purchase of the said property by private bargain, the officer entrusted with the execution of such public work, or any other officer whom the government directs, is to proceed to the spot and erect a flag thereon, causing, in cases in which it is proposed to take land, the boundaries of the land so required to be distinctly marked out, but taking care at the same time to do as little injury as possible to the property. He is then to stick up, in some convenient and conspicuous place in the vicinity, a notice of the land or other property proposed to be taken, and the purpose for which it is required; and is to make proclamation by beat of drum, as well on the spot, as in the nearest bazar, gunj, or village, calling upon any person or persons claiming a right or interest in the land or other property, to appear in person or by an authorized agent at a place to be specified in the notice and proclamation on or before a given date, not being less than fifteen days, in order to make known the precise nature of the interest claimed, and the terms on which he or they may be willing to dispose of their respective rights and interests; or, if they object to the disposal thereof, to specify the same through the proper authorities for the information of government: when the substance of all material information given in after such a notification shall be submitted by those authorities to government, together with a report of their sentiments on the case, and of the estimated value of the premises intended to be applied to a public purpose, and of the several interests attaching thereunto. Reg. I. 1824, sect. 2.

A report is to be submitted to government.

If parties refuse to dispose of the property, recourse may be had to arbitration.

2421. If the person or persons having or claiming to have a right and interest in the land, or other property, required for a public purpose, or in any part of it, objects to the disposal of the same, or demands an exorbitant consideration for the relinquishment of his or their interest; and the government, after duly considering the objections urged, and the demands made, notwithstanding deems it proper on ground of clear and urgent public expediency, that the property should be so appropriated; the government is in either of the cases above-mentioned to order the election of arbitrators to ascertain and determine

the just and full value of the whole of the property intended to be applied to public use, including the rights of all persons holding a lawful interest therein, according to the rules hereinafter contained. Reg. I. 1824, sect. 3, cl. 1.

In certain cases, government may delegate the power of directing a recourse to arbitration.

2422. Provided also that when any extensive public work has been commenced on under the orders of government, it is competent to the government to delegate to any board, committee, or the like, the duty and power of determining on all objections to the disposal of individual properties, which it is considered necessary to appropriate for the purpose; and the board or committee so empowered is competent to issue the requisite orders for the appointment of arbitrators, for the purposes and in the manner hereinafter provided, without previous reference to government. Reg. I. 1824, sect. 3, cl. 2.

Rules for the appointment and duties of arbitrators.

2423. Whenever it is requisite to have recourse to arbitration for the purpose stated in the preceding section, the following rules are to be observed in the appointment of the arbitrators, and in the conduct of their inquiries. Reg. I. 1824, sect. 4, cl. 1.

Two persons on the part of government to be chosen by whom; and two on the part of the claimants;

2424. Two persons of respectability are to be chosen to act as arbitrators on the part of government by the judge, or magistrate, or collector of the district in which the land or other property required for public use is situated, or such other officer as the government commissions for the purpose of superintending the arbitration; and the party or parties claiming an interest in the premises proposed to be taken are to be called upon by the judge, magistrate, collector, or other officer aforesaid, to elect within a reasonable time, to be fixed by such officer, two persons to act as arbitrators on his or their part. If there are several claimants, and they cannot agree within the required period in the election of persons to act as arbitrators on their behalf, then and in that case each of them is to nominate one person, whom he desires to act on his behalf, and the judge, magistrate, collector, or other officer aforesaid, is to choose by lot, out of the persons so nominated by the parties or any of them, two persons to act as arbitrators on behalf of the claimants. If only two persons are so nominated, they are to be the arbitrators on behalf of the claimants, whether the whole of the claimants have or have not been concerned in their nomination. If only one person is so nominated, then only one of the persons selected to act as arbitrators on the part of government is to be employed on the duty. If the claimants refuse or neglect to make any nomination within the required period, then the judge, magistrate, collector, or other officer is to select two impartial persons, residents of the pergunnah or other local division, to arbitrate the matter between government and the parties. Reg. I. 1824, sect. 4, cl. 2.

or only one on each side.

If the claimants neglect to appoint any.

Declaration to be made by arbitrators.

2425. The arbitrators chosen as above are to be required by the judge, magistrate, or other officer aforesaid, solemnly to promise that they will faithfully and impartially discharge the trust reposed in them, to which effect they are to sign a solemn declaration. But no corporal oath is to be administered to them. Reg. I. 1824, sect. 4, cl. 3.

Umpire to be chosen.

2426. As soon as the said obligation is signed, and before they proceed to any other duty, the arbitrators are to be required by the judge, magistrate, collector, or other officer aforesaid, to appoint an umpire for the decision of any points whereon they differ in opinion and the voices on each side are equal. If the arbitrators cannot agree in the selection of an umpire, the judge, magistrate, or other officer commissioned as aforesaid, is authorized

to choose some respectable and impartial person to act as such. Reg. I. 1824, sect. 4, cl. 4.

Differences of opinion how to be decided.

2427. In cases wherein the arbitrators differ in opinion, if the voices on each side are equal, the decision of the umpire on the point of difference is to be conclusive. In all other cases the opinion of the majority of arbitrators is to determine the award. Reg. I. 1824, sect. 4, cl. 5.

Attendance of arbitrators and umpire how to be enforced;

2428. The judge, magistrate, collector, or other officer commissioned as aforesaid, is to be competent to exercise, towards the arbitrators and umpire chosen as above, such powers and authority for the purpose of securing their attendance and the due completion of their award, as the courts of judicature may or shall legally exercise towards persons summoned as witnesses before them for the purpose of compelling them to attend and give evidence. It is further competent to the judge, collector, or other officer commissioned as aforesaid, in the event of any unnecessary delay on the part of the arbitrators in determining any point referred to them, to call upon them to make their award within a specified time, and in default thereof to refer the matter to the umpire for his decision. Reg. I. 1824, sect. 4, cl. 6.

and unnecessary delay avoided.

General superintendence of the enquiry.

2429. The arbitrators are to hold their inquiry under the general superintendence of the judge, magistrate, collector, or other officer commissioned as aforesaid. Reg. I. 1824, sect. 4, cl. 7.

Aid to be given to the arbitrators in summoning witnesses;

2430. The judge, magistrate, collector, or other officer so commissioned, is to afford to the arbitrators all necessary aid and support for enabling them to accomplish the object of their appointment. He is, on the application of the arbitrators, to summon, and is hereby authorized to summon, any witnesses whom the arbitrators call for, and whom the parties are not able to produce before them without such process. He is also to cause the proper forms of oath to be administered to, or a solemn declaration in lieu thereof to be executed by any witnesses, whom the arbitrators desire to examine upon oath, or solemn declaration; or he may empower the arbitrators to administer such oath, or to cause the execution of such solemn declaration in lieu thereof, if the witness cannot with convenience attend at the sudder station of the zillah. Any person giving intentionally and deliberately a false deposition on oath, or under a solemn declaration taken instead of an oath, in any case referred to arbitration as above, and upon a point material to the issue thereof, is to be held and considered to be guilty of perjury, and is to be liable to the penalties prescribed for that offence in the regulations; and any person causing or procuring another person to commit the offence of perjury, as above described, is declared guilty of subornation of perjury, and punishable under the provisions of the said regulations. Reg. I. 1824, sect. 4, cl. 8.

and administering oaths or declarations.

Penalty of perjury, or subornation of perjury before the arbitrators.

Information of claims to be given to arbitrators.

2431. When arbitrators are appointed, it is the duty of the officer, employed in the manner specified in sect. 2 of this regulation, to lay before them a statement of all claims made to him under the rule of that section; also to notify which of them remain unadjusted, and to furnish, upon requisition of the arbitrators, all information in his power as to the extent and boundaries of the land proposed to be taken, the claims attaching to it, the state of possession, and the like. Furthermore, in the event of any dispute arising on any

In what cases arbitrators may measure.

point connected with the extent, boundary, present possession, manner of culture, or of other appropriation of the land, or any portion of it for the time being, it is competent to the said arbitrators to cause the land, or other property in question, or any part of it to be measured in their presence, or otherwise in such manner, as they deem most desirable. Reg. I. 1824, sect. 5.

Compensation for lakhiraj land how to be determined.

2432. If the land required by government is lakhiraj, or for such portion of it as is of that description, it is the duty of the arbitrators to determine in the first instance what consideration is, in their opinion, a fair value for the whole property proposed to be assumed or destroyed in the execution of the public work in hand, or which will otherwise be lost to the owners, or affected by reason of the appropriation by government. Reg. I. 1824, sect. 6, cl. 1.

How far the arbitrators are to adjust disputes arising between parties holding different interests in such land.

2433. If a dispute arises between the owner or owners of the lakhiraj tenure on one hand, and the cultivators or renters under him on the other, as to the proportion of such entire value, which each should receive in exchange for the interest claimed or possessed by him, the arbitrators are not to enter into this part of the case, unless both or all the parties interested desire the adjustment of the points in dispute to be made by them at the time. So likewise, if there are more claimants than one to the lakhiraj interest, and it is necessary to determine the mode in which the value of that interest is to be apportioned amongst the claimants, such apportionment is not to be made unless all the claimants sign a written agreement to abide by the arbitrator's adjustment of the same. Any award made by arbitrators after agreement being signed by the parties at issue is to have effect, and to be considered as an award of court to all intents and purposes: but if no award is made in consequence of the parties not having agreed to abide by such determination, it is to be open to any one of them to carry the point or points at issue before the courts in the usual manner; and, if the government take the lands, tenements, or other property on the terms fixed by the arbitrators, it is to be competent to the court trying the case, upon due application being made, to order the whole or any part of the value paid by government to be held in deposit to answer an eventual decree. Provided, however, that nothing herein contained is to be considered to warrant any alteration being made by any order or decree of court in the rate of the consideration fixed by the arbitrators to be paid by the government, or the issue of any orders affecting the possession that has been assumed by its officers, or acts that have been done by them in consequence of such arbitration. Reg. I. 1824, sect. 6, cl. 2.

Arbitrators how to proceed in adjusting the compensation to be made for khirajee land.

2434. If the land, proposed to be assumed for the purposes aforementioned, be khirajee land, or for so much of it as is of that description, it is the duty of the arbitrators to determine, *first*, the amount of the net rent, which the sudder malguzar derives from the land, as far as they can ascertain the same; *secondly*, the value of any other property or interest which the said malguzar possesses in, upon, or belonging to the land; and *thirdly*, the value of any property, or interest, which is possessed by persons other than the sudder malguzar. They are at the same time to state the value of the net rent derived by the sudder malzugar; and it is competent to government to determine what proportion of the compensation due to that person, for the loss of the said rent, shall be made good in the

shape of an annual remission of revenue, and what shall be commuted for a payment in ready money, to be calculated at the rate assumed in the valuation of the arbitrators. In estimating the net rent no deduction is to be made from the gross rental of the sudder malguzar, on account of the government revenue, with which his estate is assessed. And it is the duty of arbitrators, in fixing the value of the net rent derived by the sudder malguzar from the land taken for public purposes, conjointly with the value of other interests possessed therein, so to regulate the two that the whole shall constitute what would have been a fair value of the property supposing it to have been lakhiraj, and held free of all burthen or encumbrance; and the arbitrators are in every case of this description to certify at the foot of their report that the above direction has been observed. Reg. I. 1824, sect. 6, cl. 3.

Rights of parties claiming an interest in such land, how to be adjusted.

2435. Whenever any revenue deduction is ordered, it is of course to be passed in the revenue accounts to the credit of the muhal, on account of which it is awarded by the arbitrators, in whosesoever possession the same may be. Should the proprietor of any other muhal claim to participate therein, it is to be open to him to prosecute his claim by suit in court against the proprietor of the muhal on account of which it is paid. Provided, however, that in case any litigation between the proprietors of different muhals, claiming to participate in the deduction awarded by the arbitrators, is submitted to their award in the manner above provided for the case of lakhiraj lands, the same when made is to be binding, and to have effect to all intents and purposes as a decree of court. So likewise if there arises a difference or dispute as to the manner and proportions in which the money compensation, to be given by government upon the occupation for public purposes of khirajee land, is to be divided between the ryots and under tenants, or between them and the government malguzar, or between any other classes of persons claiming to participate, the course is in all such cases to be the same as is prescribed in the preceding clause* of this section for the case of lakhiraj lands, which have been taken possession of for public purposes by government, and of disputes arising in the apportionment of the consideration adjudged to be paid in consequence. Reg. I. 1824, sect. 6, cl. 4.

* *Sic. in orig. sc. cl.* 2.

Arbitrators how to proceed when the question of possession is doubtful, or if other circumstances make the immediate payment of the compensation improper.

2436. If the question of possession is in any case doubtful, or if there exist other grounds, which, in the judgment of the arbitrators, render it improper to make immediate payment of the compensation awarded by them, or any part thereof, to any of the claimants, it is to be the duty of the arbitrators to certify the circumstances to the judge, magistrate, collector, or other officer under whose directions they act; and in such case the amount which they propose to reserve is to be invested in government securities, and held in deposit, until one of the claimants obtains an order of court for the payment of the same.

Title of government to land so acquired is not to be defeated or disturbed by disputes regarding the right or title of former occupant.

But no dispute touching the property, or possession of land, or other property required for public purposes, nor any flaw in the title of the party by or from whom it is transferred to government on the award of arbitrators, is to be allowed to defeat or disturb the title acquired by government; and if any person or persons sue in any court of judicature to recover from government damages or compensation for the loss of any such land or other property, such person or persons are to be nonsuited with costs. Provided also that in cases wherein the possessor and ostensible proprietor of any land, or other property required for any public purpose, has consented to transfer the same to government on

Claimants to the land or other property must prefer their claims as required in the proclamation.

terms mutually agreed to, it is competent to government, or any board or committee authorized in that behalf, to cause proclamation to be made in the manner prescribed in the second section of this regulation, requiring all persons claiming any right, title, or interest, in such land or other property, to prefer their claims on or before a certain date; and after such proclamation has been made, and the land or other property has been transferred to government, any claim or suit to recover the same, or to obtain from government compensation for the loss thereof, which is preferred in any court of judicature, is to be dismissed with costs, unless the claim has been preferred as required by the said proclamation. But nothing herein contained is to affect the liability of the party who receives the value of any land or other property transferred to government without having a good title to the same. Reg. I. 1824, sect. 6, cl. 5.

This does not affect the liability of parties receiving the value of such property without title thereto.

2437. On the close of the enquiry, the arbitrators or umpire are to deliver to the officer, commissioned as aforesaid to superintend the arbitration, a full and specific report and award upon the point or points submitted to their arbitration under their respective signatures with a solemn declaration subscribed thereto, that the award so given is to the best of their judgment true and impartial, and according to the evidence adduced before them: they are at the same time to deposit with the said officer the whole of their proceedings. Reg. I. 1824, sect. 7, cl. 1.

Report to be made by arbitrators to the superintending officer.

2438. The aforesaid officer is to transmit to government the report and award so delivered to him, with a report stating the material points thereof, and his sentiments how far the inquiry made by the arbitators appears to have been conducted with fairness and impartiality, or otherwise; and the said officer is to be guided by the instructions of government in regard to the execution of the award, when the same has been approved by government. Reg. I. 1824, sect. 7, cl. 2.

Officer receiving such report how to proceed.

2439. No award made under this regulation is to be liable to be reversed or altered, unless the same is open to impeachment on the ground of corruption or gross partiality, or extends beyond the authority given to the arbitrators; and such ground of impeachment is to be established on a regular suit in the adawlut. Reg. I. 1824, sect. 7, cl. 3.

Grounds on which alone award may be impeached.

2440. If, after the award has been given in by the arbitrators, and the goverment has directed the premises to be appropriated for public purposes, the officer directed to occupy the same is opposed or impeded in taking possession, he is to apply to the magistrate of the district, to whom it will and may be lawful to enforce the surrender of the said premises. Reg. I. 1824, sect. 7, cl. 4.

After award the magistrate on application may enforce the surrender of the property.

2441. In cases referred to arbitration, under the provisions of the preceding sections, any necessary expense which attends the inquiry of the arbirators, whether for diet of witnesses or otherwise, is to be paid by government. Reg. I. 1824, sect. 7, cl. 5.

Necessary expenses to be paid by government.

SECTION IV.

OF MUNICIPAL COMMITTEES.

The local government may authorize measures for conservancy purposes, on the request of two-thirds of the householders;

2442. If it appears to either of the governments of the presidency of Fort William, that two-thirds in number of the householders of any town, suburb, settlement, or place of public resort and residence, are desirous of making better provision for the repairing, cleansing, lighting, draining, or watching of any public streets, roads, drains or tanks, or any like local purpose, it is lawful for the local government, to which such place as above described is subject, to authorize the same in manner following. Act X. 1842, sect. 1.

i. e. house proprietors;

2443. The term "householder" as used above, is applicable to house-proprietors only, and not to tenants. Const. No. 1367.

by means of a committee of the inhabitants of the place.

2444. The local government, upon any application made to it for the purpose by or on the part of the householders aforesaid, may at its discretion authorize the persons whose names are presented, or so many of them as it is thought proper, being inhabitants of the place as above described, to be a committee for the purpose of effecting the local objects specified in the application. Act X. 1842, sect. 2.

2445. No persons not "being inhabitants of the place" brought under the operation of the Act can be appointed members of the committee. Const. No. 1367.

Such committee may make the necessary rates not exceeding 5 per cent. of the value of the premises.

2446. Any such committee may make such assessments and at such rates as are necessary for effecting the objects aforesaid, and may make all necessary contracts and appoint such servants as are required with reasonable salaries. Provided always that no rate exceeding the amount of 5 per cent. on the rent or yearly value of the premises within the place as above described, or more than one rate in any year, is to be raised without the express sanction of the local government. Act X. 1842, sect. 3.

The operation of the Act continues permanent; and rates may be revised annually.

2447. When the Act has been once rendered operative, and the committee constituted, on the application of the householders, the operation of the Act continues permanent; and a revision of the rates may be made annually at the discretion of the committee, with reference to the increase or decrease in the number of inhabited houses, and the rise or fall in rents. Const. No. 1367.

Such committees are not liable for monies collected, except when misapplied;

2448. No member of any such committee is to be personally liable in respect to any contract entered into by such committee on behalf of the inhabitants of any place as above described. Provided that the said committee and every member thereof are to be liable for the misapplication of all monies collected, and the same are to be recoverable in a civil action as the money and at the suit of the local government. Act X. 1842, sect. 3.

whether fraudulently or otherwise.

2449. Under the terms of the above provision, the committee in all its members would be jointly and severally responsible for any misappropriation of monies collected to purposes foreign from those contemplated in the enactment, whether fraudulent or

otherwise; but the fact, whether the act complained of was or was not a "misapplication" of the nature described above, would be determinable on trial by civil action. Const. No. 1367.

Government is to prescribe rules for the security of the funds; and may remove members of committee.

2450. The local government is in every case to prescribe such rules for every committee as appear necessary for the proper security of the funds collected from the inhabitants: and has the power of removing any member of every such committee on its appearing to such government that the security or efficiency of the trust is in danger of being impaired. And in case of no person being named by the remaining members of the committee to the satisfaction of the local government to act upon such committee in the place of the person removed within one month, the local government may appoint a member of the committee in the place of the person removed. Act X. 1842, sect. 4.

Annual accounts to be rendered by the committee.

2451. Every such committee is on the 30th day of April in every year, or oftener if required by the local government, to render to the local government an account of all sums received and expended in the preceding year, in such form and with such vouchers as the local government from time to time requires. Act X. 1842, sect. 5.

Arrears of rate how to be realized.

2452. Upon application of such committee to any magistrate or justice of the peace, such magistrate or justice is required to exercise the same powers for levying the rate which is due from any defaulter as are specified in Act II. 1839.* Act X. 1842, sect. 6.

*v. *para.* 919, *et seq.*

Rate not to be invalidated for defect of form.

2453. No rate is to be invalidated for defect of form, and it is sufficient if in any such rate as aforesaid, or any assessment for the purposes of such rate, the property assessed is sufficiently identified, and it is not necessary to specify the name of the owner or occupier thereof. And all property found at any time upon the premises rated is liable to be seized and sold under warrant from a magistrate or justice of the peace for the payment of the rate. Act X. 1842, sect. 7.

Government may at all times dissolve such committee, and appoint persons to inquire into their conduct.

2454. It is competent at all times to the local government to dissolve any such committee, and to appoint any person or persons to inquire into and report upon the conduct of such committee or of any members thereof in the execution of their trusts; and such person or persons so appointed have power to send for persons, papers, and records, and to compel the attendance or delivery of the same, and to examine witnesses upon oath. Act X. 1842, sect. 8.

Session judge may make suggestions to government regarding public works; but cannot interfere with committee.

2455. It is satisfactory to government to receive from the session judges, in their periodical reports, any remarks or suggestions they may wish to offer regarding public works undertaken under the direction of the local committees. Of course, however, it is not intended that the session judges should exercise any control over, or in any manner interfere with those committees, who act under the immediate orders of government. C. O. No. 308 of vol. 1.

CHAPTER III.

OF LOCAL NUISANCES.

Magistrate is empowered to suppress local nuisances.

2456. It is lawful for any magistrate, when the public benefit and comfort are in question, to cause unlawful obstructions and nuisances to be removed from thoroughfares and public places; and to suppress, or cause to be removed to a different place, trades or occupations injurious to the health or comfort of the community; and to prevent such construction of buildings and such disposal of combustible substances, as appear to him likely to occasion conflagration; and to cause the removal of buildings in such state of weakness, as, by the probability of their falling, appear to him to expose individuals to danger. Act XXI. 1841, sect. 1. See also infra 1798

He is to issue an injunction, or proclamation and written notice, to the parties concerned.

Power to compel observance thereof by force, and punishment of disobedience.

Enclosure of wells and tanks.

2457. In exercising the authority conferred by the above section, the magistrate, after holding such enquiry as satisfies him of the necessity of proceeding under this Act, is to issue an injunction, which, if practicable, is to be served personally on the parties concerned; but if such service is impracticable or very inconvenient, the injunction is to be notified by oral proclamation, and a written notice thereof is to be set up at such place or places as may be best adapted for conveying information to the parties concerned. And in case such injunction is not obeyed, the magistrate may compel observance thereof by force, and punish disobedience by fine not exceeding 200 rupees, or by imprisonment without labor for any period not exceeding one month. And if the magistrate finds it necessary to incur expense in removing noxious or dangerous articles or buildings, it is lawful for him to sell the same or their materials by public auction in order to defray the charge, delivering any surplus that may remain to the owner. And it is lawful for the magistrate to compel, under the like penalty, the owners of tanks or wells, adjacent to any public thoroughfares, to fence the same in such manner as to prevent danger to the public arising therefrom. Act XXI. 1841, sect. 2.

Person affected by such order may claim the appointment of a punchaet, which is to be nominated by the magistrate and the claimant.

Magistrate to be guided by the decision of such punchaet. But if they do not decide within prescribed time, his order

2458. It is lawful for any person affected by such injunction or written notice as is above described, if he objects thereto, to claim by written petition, to be presented to the magistrate within the period of ten days if reasonably practicable (if not, within the shortest reasonable further time from the receipt of such injunction or the publication of such notice), that a jury or punchaet may be appointed to try and decide the question; and the magistrate is, on receiving such petition, to pass order thereupon for the appointment of a jury or punchaet, which is to consist of not less than five persons, whereof the president and one half of the other members are to be nominated by the magistrate from the residents in the vicinity, and the remaining members are to be nominated by the party petitioning. And the magistrate is to suspend the further execution of the injunction or order pending such enquiry, and to be guided by the decision of the said jury, which is to be according to the opinion of the majority. Provided however that if the petitioner, by neglect or in any other way, prevents the appointment of such jury or punchaet, or if from any cause

the jury so appointed does not decide and report within a reasonable time to be fixed in the order for their appointment, their functions are to cease from the date of the expiration of such period, unless they are continued by special order of the magistrate; and if from any of the above causes no decision is made by the jury or punchaet, the magistrate's order is to take effect as if not opposed. Act XXI. 1841, sect. 3.

is to take effect as if unopposed.

2459. All the proceedings of magistrates under the authority of this Act, are subject to the like appeal, as other orders of magistrates according to the regulations. Act XXI. 1841, sect. 4.

Orders of magistrate are subject to appeal,

2460. All orders passed by magistrates, under the above provisions, are appealable to the session judges only. C. O. No. 157 of vol. 3.

to the session judge.

2461. Care must be taken to prevent this Act from operating oppressively towards persons affected by it. C. O. No. 131 of vol. 3.

Oppression to be avoided.

2462. This Act is not applicable within the local limits of Her Majesty's courts of justice. Act XXI. 1841, sect. 5.

Act does not extend to limits of supreme court.

2463. The local police officers are to ascertain from time to time the state of public wells without proprietors; and are to report to the magistrate whenever they are insecure from the want of a parapet wall or otherwise, with a statement of the expense required to make them secure. If the expense so stated is inconsiderable, and appears on inquiry to be necessary for the purpose of securing a public well, the magistrate is authorized to defray it, and to charge the amount in his monthly contingent bill with the usual explanation. But if the stated expense is in any instance more than 50 rupees, he is to transmit the police officer's report with his sentiments upon it to the superintendent of police, in conformity with the rule of sect. 17, Reg. XVII. 1816.* C. O. No. 191 of vol. 1.

Wells, without proprietors, are to be made secure by the magistrate at the public expense.

* *v. para:* 2412 *et seq.*

2464. Under the orders of government, no rewards are to be given for killing dogs, except, and subject to the sanction of the superintendent of police, on particular occasions, or when they become rabid, or serious apprehensions are otherwise entertained. C. O. Sup. Pol. *L. P.* No. 10 of 1839.

Killing dogs, when rewards may be given for.

2465. Magistrates are to take all the means in their power to trace out and punish persons committing malicious injuries on public property,—such as the removal of mile stones, stealth of flag stones from surface drains, destruction of bridges, and the cutting through of roads or embankments. C. O. Sup. Pol. *L. P.* No. 5 of 1841.

Magistrates to punish persons committing malicious injuries on public property.

Embankments.

2466. Should any person be guilty of the offence of making cuts through any of the embankments maintained at the expense of government in any other manner than that prescribed [*i. e.* by an application through the native officer in immediate charge to the superintendent of the embankments], he is liable to be prosecuted criminally before the magistrate for such misdemeanor; who is to decide on the case, or to refer it to the sessions court, according to the extent of the injury done by the offender, and the punishmont to which the magistrate considers him liable. Any person so offending is likewise liable to be prosecuted in the civil court for damages by any person or persons, who have sustained any loss or injury from the improper opening of the embankments. Reg VI. 1806, sect. 12, cl. 6 and 7.

Persons guilty of cutting through embankments belonging to government are liable to what penalties.

So, persons cutting through private embankments.

2467. The foregoing rule is applicable to the embankments repaired by the zumeendars and farmers; with this difference, that when any person is desirous that watercourses should be made through any part of such embankments, he is to apply to the zumeendar or farmer, or to the officers employed by him in superintending the repair of the embankments, from whose decision he may appeal to the officer in charge of the government embankments. Any person infringing this rule is subject to the penalties stated above, and to a civil action for damages, at the suit of any individual as above mentioned. Reg. VI. 1806, sect. 13.

Rivers.

No bandels are allowed in navigable rivers.

Punishment of persons replacing any bandels, &c. removed by the supervisor, or fixing them within certain limits in opposition to his orders.

Further punishment if the offender has used violence, or been guilty of any breach of the peace.

2468. No bandels, or contrivances for fishing, or for any other purposes, which may tend to obstruct the free navigation of the Bhagaruttee, Jellinghee, Issamuttee, Matabhangah, and Choornee rivers, or other navigable rivers and streams, for the supervision of which the government deems it necessary to provide, are to be allowed or permitted. Whenever the supervisor of rivers, with the approval of the board of revenue or other controlling authority, has removed any bandel or other contrivance for fishing, which has been fixed or sunk at any place in the said rivers to the obstruction of navigation; or has prohibited the fixing or sinking of any obstruction within any specified limits; then, if any person replaces the bandels or other contrivances removed as aforesaid, or sinks or fixes any such in opposition to the prohibition of the supervisor, the bandels or other contrivances for fishing so replaced, or fixed, or sunk, are to be destroyed; and the party offending is liable to such punishment not exceeding a fine of 50 rupees, or in default of payment imprisonment without irons in the debtor's jail for one month, as the magistrate of the district may judge adequate to the offence; provided however that if the offender has used violence, or been guilty of any breach of the peace, he is, on conviction, besides any further punishment, to which he is subject under the general laws and regulations, liable to imprisonment in the crimimal jail with hard labor for a period not exceeding 3 months, and is to be required, at the discretion of the magistrate, to furnish adequate security for keeping the peace. Reg. VIII. 1824, sect. 10.

Punishment of persons preventing the collector or supervisor, or any of their officers from fulfilling their duties, or forcibly resisting them in the execution thereof.

* *v. para.* 1226 *et seq.*

2469. Any person who by force or threats prevents the collector of tolls, supervisor of rivers, or any of his or their officers from fulfilling the duties assigned to them by this regulation, or who forcibly resists them in the execution of those duties, or who advises or encourages such resistance, is liable, on conviction before the foujdaree court of the district, to the penalties prescribed for the offence of resisting the process of a magistrate.* Parties so offending are further liable, in the event of an affray or other breach of the peace occurring in consequence of their resistance, to be punished under the general rules applicable to such cases. Reg. VIII. 1824, sect. 11, cl. 1.

Collector, supervisor, &c. how to proceed if forcible resistance is apprehended.

Punishment of police officers not giving assistance.

2470. If the collector, supervisor, or other officer aforesaid, has in any case reason to apprehend forcible resistance, he is to apply to the nearest darogah to aid him in the execution of his duty; and all darogahs, or other officers in charge of thanas or chokees, are on such requisition being made, or its appearing to be otherwise necessary, immediately to afford the requisite assistance, under pain of dismissal from office and such fine, not exceeding 200 rupees, as the magistrate may adjudge, commutable, if not paid, to imprisonment in the dewanny jail for a period not exceeding 3 months. Provided also that if any

zumeendar, talookdar, or other proprietor or farmer of land, or the naib, gomashtah, or other local agent of such proprietor or farmer, wilfully permits any one to resist the collector, supervisor, or other officers aforesaid, within the village or lands occupied or managed by him, he is liable, on conviction before the magistrate, to a fine not exceeding 200 rupees commutable as aforesaid. Reg. VIII. 1824, sect. 11, cl. 2.

Punishment of landholder permitting such resistance within his estate.

2471. The collector, supervisor, and their native officers duly authorized by them, are authorized to arrest and deliver over to the nearest police darogah, or other police officer authorized to receive criminal complaints, any person or persons guilty of any of the offences stated in the two preceding sections, for the purpose of their being forwarded to the magistrate; and all police officers aforesaid are required, subject to the provisions hereinafter specified, to receive and safely to forward to the magistrate of the jurisdiction, within 24 hours, all offenders so delivered over. Provided always that the supervisor or his officers give at the same time a written requisition to that effect, duly attested and dated, specifying the name of the offender and the nature of the offence, and engaging that a full report shall be transmitted to the magistrate, and that all other necessary measures for the conduct of the prosecution shall be taken within ten days from the date on which the offender or offenders have been apprehended. Provided also that in such cases, if the party accused tenders sufficient bail for appearance before the magistrate, and has not been guilty of any offence, which by the general regulations is not bailable, the darogah or other officer aforesaid is to accept the bail and release the party. Reg. VIII. 1824, sect. 12.

Collector, supervisor, &c. empowered to apprehend, and make over to the police officer such offenders, together with a written charge; and the police officer is to forward them to the magistrate within 24 hours; but may accept bail.

2472. No person is to be detained in custody by a magistrate under the above provision beyond the period of ten days, if during that period the supervisor has not preferred his complaint, and pursued the necessary measures for the furtherance of the prosecution in the prescribed manner. Reg. VIII. 1824, sect. 13.

Magistrate is to discharge such persons, if the complaint is not preferred within 10 days.

2473. The supervisor is entitled to direct the vakeel of government to conduct all criminal prosecutions instituted by him under the provisions of this regulation; and the collectors of revenue are authorized to supply the vakeel of government on application from the supervisor with the stampt paper, which is required for the purposes aforesaid. Reg. VIII. 1824, sect. 15.

Supervisor may employ the government vakeel in such cases; and the collector is to supply stampt paper.

BOOK IV.

OF OFFENCES AGAINST GOVERNMENT.

CHAPTER I.

OF COINING.

Duties of police officers towards persons charged with or suspected of coining.

2474. The darogahs of police are to apprehend and send to the magistrate all persons uttering base coin, knowing it to be such, or who are charged with counterfeiting or debasing the current coin. On the receipt of credible information they are, under the provisions of section 16,* to proceed to search the houses of persons accused of manufacturing or knowingly uttering base or counterfeit coin; and to seize and transmit to the magistrate any such coin which is found, together with all implements used for the purpose of debasing or counterfeiting the coin; also all books of accounts relating to the sale or circulation of base coin, together with such evidence as is procurable to establish the offence imputed to the accused. Reg. XX. 1817, sect. 17.

* *v. paras.* 1171 *et seq.*

Persons charged with offences against the coin to be made over to criminal courts.

2475. Persons charged with counterfeiting, clipping, filing, drilling, defacing, or debasing the gold or silver coin, are to be committed to the criminal courts, and punished as the law directs. *Beng.* Reg. XXXV. 1793, sect. 12. *Ced. Prov.* Reg. XLV. 1803, sect. 14.

2476. The above rule is equally applicable to the copper coinage. *Ced. Prov.* Reg. XLV. 1803, sect. 51, cl. 1.

Sentence to be passed on persons convicted of forgery, of counterfeit coin, public stamps, securities, or bank notes.

2477. The session judge, before whom a prisoner is convicted of having forged or procured to be forged any counterfeit coin in imitation of any of the gold, silver, or copper coins of the British government in India, or of any coin usually received as money in the British possessions in India; or of having forged, or procured to be forged, any counterfeit stamp or stampt paper in imitation of any public stamp established by the British governments in India: or any counterfeit note, or other security for money, in imitation of any of the public securities of the British governments in India, or of the bank notes issued by any public bank in the British possessions in India;—is to sentence him to be publicly exposed in the mode commonly denominated tusheer, to receive thirty stripes,* and to be imprisoned in banishment from the district for the term of fourteen years;—unless the judge, on consideration of all the circumstances of the case, is of opinion that any part of the prescribed punishment is too severe; in which case he is authorized to mitigate the sentence to imprisonment, with or without tusheer, for any period not less than seven years. Reg. XVII. 1817, sect. 9, cl. 2.

* *Commutable to* 2 *years' imprisonment by cl.* 2, *sect.* 2, *Reg. II.* 1834.

Power of session judge to mitigate such sentence.

2478. If in any instance the judge is of opinion that a further mitigation or remission of punishment is necessary, he is, provided he concurs in the conviction of the prisoner, to pass sentence according to the preceding clause, and to refer the trial with his sentiments at large for the final sentence or order of the nizamut adawlut. Reg. XVII. 1817, sect. 9, cl. 3.

If further mitigation is necessary, trial to be referred to nizamut adawlut.

2479. To a conviction of forgery, it is not necessary that the coins forged should be of base metal; or that the imitation be of a coin which is a legal tender of payment, provided it is current among the natives themselves. N. A. R. vol. 2, page 177.

The coins forged need not be of base metal; nor the coin imitated a legal tender.

2480. A prisoner charged with forging counterfeit coin was acquitted, because it appeared that the pieces were intended as ornaments, and not to be passed for legal coin, being "made of pewter, very light, and so badly fabricated that any child could at once say that they were not good coin." N. A. R. vol. 3, page 198.

But it seems necessary that the forged should resemble the good coin so far as to deceive people.

2481. To establish the charge of counterfeiting coin, it is not necessary that the criminal should be detected in the act of forging the spurious coin. N. A. R. vol. 4, page 95.

The coiner need not be detected in the act of forgery.

2482. If any person is convicted before a sessions court, or the court of nizamut adawlut, of the offence of using, issuing, selling, or otherwise disposing of, or attempting to dispose of, counterfeit stampt paper, bearing the imitation of a public stamp, knowing the same to be counterfeit;—or the offence of paying, or tendering in payment, counterfeited coin, bank notes, promissory notes, or other securities for money, knowing the same to be counterfeit;—or of the offence of clipping, filing, drilling, defacing, or debasing the gold or silver coin of the British governments in India, or any coin usually received as money, within the British possessions in India;—he is to be sentenced to imprisonment for such period, not exceeding seven years, as the session judge deems adequate to the nature and circumstances of the case: and is also, in all instances of an aggravated nature, or of a repetition of the offence after being once convicted and discharged, to be sentenced to public exposure by tusheer. In every instance of a repetition of the offence, after a previous conviction and discharge, the session judge may further, at his discretion, sentence the offender to receive corporal punishment by stripes.* If a person twice convicted and discharged is again found guilty of any of the above specified offences, and the session judge is of opinion that he ought to be imprisoned for a longer period than seven years, he is to refer the trial with his sentiments for the sentence of the nizamut adawlut in pursuance of cl. 7, sect. 2, Reg. LIII. 1803. Reg. XVII. 1817, sect. 10, cl. 1, 2, and 3.

Sentence to be passed on persons convicted of using, &c. counterfeit stamps,—or of paying or tendering in payment counterfeit coin, &c.,—or of clipping, &c the coin

In case of aggravation or repetition

* *Commutable to 2 years' imprisonment by cl 2, sect. 2, Reg. II 1834.*

If the offence is repeated more than twice, or very much aggravated.

2483. The offence of selling counterfeit gold mohurs (much defaced) for bullion, knowing the same to be counterfeit, (though unquestionably a fraud, and punishable as such under the general regulations, and the provisions of the Mahomedan law), cannot be held to fall within the above rule; inasmuch as the offence of "selling" counterfeit coin as bullion cannot, by any construction, be made to signify the offence of "paying or tendering in payment." The penalties provided in the following section are applicable to such a case. Const. No. 464.

Selling counterfeit coin for bullion is punishable as a fraud, and not under the above rule.

2484. The melting down gold and silver coins, for the purpose of making ornaments with the metal, is not punishable under the above provisions. Const. No. 559.

Melting down coins is not punishable.

Sentence on person convicted of having in his possession counterfeit coin or stampt paper.

2485. If any person, subject to the jurisdiction of a magistrate, is convicted of having in his or her possession, without lawful or satisfactory excuse, any counterfeited coin, or stampt paper, bearing an imitation of any current coin, or public stamp, and does not show good and sufficient cause for having such counterfeit coin or stampt paper in his or her possession, the person so convicted is to be sentenced by the magistrate to pay a fine equal to four times the nominal value of such counterfeit coin or stampt paper in his or her possession; one moiety of which fine is, on receipt of it, to be given to any informer or informers, who have given information of the offence and established the truth of it. In the event of such fine not being paid, the person convicted is to be confined for such period as the magistrate may direct, not exceeding six months. The counterfeit coin or stampt paper is also, in every instance, to be forwarded to the mint-master, or superintendent of stamps respectively. Reg. XVII. 1817, sect. 11.

Half the fine to be given to the informer.

Disposal of such coin and paper.

But the person having the coin must be acquainted with its nature.

2486. The above provisions are not applicable to a person carrying or conveying counterfeit coin for another, unless there is proof that he was acquainted with the nature of the coin. N. A. R. vol. 3, page 58.

Magistrate cannot punish, for having in his possession counterfeit coin, a person acquitted by the sessions court of uttering the coin with intent to defraud.

2487. A prisoner was tried at the sessions on a charge of uttering counterfeit coin with intent to defraud, and acquitted: the magistrate afterwards sentenced the prisoner to a fine for having the counterfeit coin in his possession: it was held that, supposing the trial before the sessions court to have included an investigation of the latter point, the magistrate was not warranted in sentencing the prisoner to a fine on the proceedings held before his commitment, after he had been acquitted by the sessions court and a warrant had been issued for his release. Const. No. 362.

Having instruments with intent to counterfeit coin is an offence.

2488. The having in possession instruments of coining with intent to counterfeit the current coin, is a punishable offence under the Mahomedan law. N. A. R. vol 5, page 170.

Precedents.

Forging, and procuring it.

2489. One prisoner convicted of forging, and another of procuring the forging, of counterfeit rupees and gold mohurs, were sentenced, under the circumstances of the case, to 3 years' imprisonment with hard labor. N. A. R. vol. 2, page 177.

Preparing earthen mould for forging.

2490. A prisoner convicted of preparing an earthen mould, with intent to forge copper coin, was sentenced, under the circumstances of the case, to imprisonment for 2 years. N. A. R. vol. 2, page 186.

Forging pice. Age and infirmity not sufficient excuse for slight punishment.

2491. The commissioner recommended a prisoner, convicted of forging copper coin, to mercy on account of his great age (72 years) and weak intellect, and because he appeared to be the dupe of other persons who escaped, with an opinion that imprisonment for six months would answer the ends of justice. The court held that age and infirmity were insufficient grounds for mitigation to the extent proposed; and sentenced him to 3 years' imprisonment, without labor and irons. N. A. R. vol. 4, page 174.

Having spurious pice, and instruments for manufacturing them.

2492. A prisoner convicted of having in his possession counterfeit pice, and earthen moulds and other implements for fabricating the same, under circumstances indicating that the latter had recently been used in forging spurious pice, was sentenced to 2 years' imprisonment with labor. N. A. R. vol. 4, page 95.

Having implements of coining with intent to forge.

2493. Three prisoners, convicted of having in their possession implements of coining with the intent to forge coin, were sentenced, — No. 1, who had been twice before punished

for forging counterfeit coin, to 7 years' imprisonment with labor in irons, — and Nos. 2 and 3 to imprisonment for 3 years without irons, and a fine of 50 rupees each in lieu of labor. N. A. R. vol. 5, page 170.

Vending forged stamps.

2494. Five persons convicted of vending forged stampt paper were condemned to fine and imprisonment in different degrees; but the sentence was passed under the discretionary rule of sect. 30, Reg. VI. 1797, which is rescinded, and is superseded by the later provisions given above. N. A. R. vol. 1, page 22.

Forging stamps, and vending them.

2495. A prisoner charged with vending forged stampt paper, pleaded that he had received it to sell on account of another person; but he failed to substantiate this plea; and as implements of forgery were found in his house, the presumption was held that he not only sold the stampt paper, knowing it to be forged, but that he actually committed the forgery. He was sentenced to tusheer, godna, and imprisonment for 7 years,—under sect. 3, Reg. II. 1807, which has also been superseded by the provisions of Reg. XVII. 1817. N. A. R. vol. 1, page 284.

Altering the value of stampt papers.

2496. A vakeel convicted, in three cases, of altering or causing to be altered the value of a number of sheets of stampt paper, was sentenced to tusheer, and imprisonment with labor for 10 years.(a) N. A. R. vol. 2, page 466.

(a) The following information, contained in a letter from the judge of the city of Patna, to the address of the superintendent of stamps, dated the 13th of June 1825, is calculated to afford some idea of the extent to which practices similar to those which formed the subject of the above trials had been carried, and the loss to which the government had been consequently subjected in this branch of the public revenue. "I received charge of this city in the latter end of March 1825; and so early as the commencement of April, noticed the prevalence of a species of forgery, by which stamps of inferior value are made to bear a greater value, and in such a fictitious shape are used to file as original plaints, plaints of appeal, &c. As it appeared to be highly important that this nefarious plan should be thoroughly sifted, that the forgers, aiders, and abettors, should be brought to justice (measures which in my opinion offered the only sure means to the prevention of the offence in future) I entered at once into the investigation. In the progressive steps of the investigation, I discovered that the files of the sudder ameens, register, judge, and judges of appeal were all infected, and that the whole required to be narrowly searched. I, in consequence, determined to commence with the lower court, taking the files severally in hand, so as to allow time to the stamp venders to give in such reports as appeared necessary, and to prevent this investigation materially interrupting the current business of the civil and criminal courts. Upon an examination of the suits actually filed and undecided in the moulovee sudder ameen's court, I have discovered thirty-six forged original plaints, and thirteen forged vukalut-namas; and in tracing the utterers of the forgeries, I have brought the whole home to one vakeel, by name Bhondoo Lal, who, by his defence, has thrown considerable further light upon the subject, and furnished me with information regarding his associates. The stamp venders are now compiling a report on the suits upon the file of the register previous to their entering upon the file of the judge, which, as it embraces appeals from all the lower courts, will of course contain the greatest number, and in which, upon a cursory view, I have already marked 435 forgeries. Meanwhile it chanced to occur to me, that the forgers, who would naturally seek the most advantageous let for uttering their paper, had possibly taken advantage of sect. 11, Reg. XIII. 1810, and had made fictitious prosecutions on altered stamps with a view to defraud the Honorable Company of the institution fee. I accordingly addressed the court of appeal, requesting the judges of the court to furnish me with any cases of razeenama baznama in suits which were filed during the years 1822-23; and in their reply to my letter, the judges of the court of appeal furnished me with four suits, all of which had been brought to decision by baznama. I immediately proceeded to the investigation, in the progress of which I have established that the whole four are fictitious; that the stamps of the plaints were originally of one rupee in value, have been altered so as to bear a superior value, two of them to the amount of 250 rupees, and two of 350 rupees, and that the gang concerned in filing them obtained the sum total of their apparent value, or 1200 rupees, from the treasury of the court of appeal." *Note at N. A. R. vol. 2, page 468.*

CHAPTER II.

OF OFFENCES AGAINST THE STAMP LAWS.

Penalty for filing or recording stamped paper not duly endorsed and signed.

2497. If any deed, instrument, petition, pleading or other writing, required to be written on stamped paper, and written on the prescribed stamped paper, is filed, exhibited, or recorded in any court of judicature or public cutchery, or before any judge or other public officer, not bearing the signature and endorsement of a licensed stamp vender (or not procured in the manner prescribed by this regulation, and duly certified to be so when not obtained from a licensed vender [*i. e.* stampt paper or other material obtained by individuals under sect. 11, each separate sheet or piece of which must bear on the back the signature of an officer on the establishment of the superintendent of stamps], the person or persons filing, exhibiting, or recording the said deed, instrument, petition, pleading, or writing, or causing or procuring it to be filed, exhibited, or recorded, is to forfeit a sum equal to five times the value of the said stamped paper. If any deed, instrument, petition, pleading, or document is filed, exhibited, or recorded as aforesaid, having a forged or counterfeit stamp or signature, the person filing, exhibiting, or recording such deed, instrument, or document, that is to say, the party or his agent, who has produced the same for the purpose of being filed, exhibited, or recorded, is to forfeit to government a sum equal to twenty times the value of the stamp, which ought to have been used; unless the material, on which the same is executed, bears the signature and endorsement required by this regulation, and the party is able to show to the satisfaction of the judge or other officer conducting the enquiry on the part of government as hereinafter directed, that the material stamped with a forged stamp was purchased or obtained on the date and in the manner specified on the back, or was otherwise procured in some manner prescribed or permitted by this regulation. If the said signature and date is duly endorsed on the back of the material stamped as aforesaid with a forged impression, and the proof adduced to the fact and to the date of purchase is deemed by the judge or other officer, before whom or in whose office the deed, instrument, or other writing has been filed, exhibited, or recorded, to be sufficient, that officer is to transmit the document to the collector with a communication of his judgment in the case, in order that proceedings may be instituted against the vender; and the collector, on payment by the party of the established duty chargeable on account of the matter of the instrument or deed in question, is to forward it to the superintendent of stamps, in order that it may be duly stamped; the amount so paid being recoverable from the vender or from any fine levied from him on account of the transaction.(a) Reg. X. 1829, sect. 13, cl. 1.

Penalty for filing such paper of which the stamp or signature is forged; unless the person filing it is able to show that he purchased it as endorsed.

In such cases courts how to proceed.

(a) It appears from the above that, in the case of a paper merely requiring the prescribed endorsement and signature of the vender, the court or authority before whom it is filed must levy the penalty:—in the case of a paper bearing such endorsement and signature, but the stamp or signature of which is forged, if the person filing it satisfies the court or authority before whom it is filed that the paper was bonâ fide sold to him, and that he has not been guilty of any offence, then the paper is to be made over to the collector to proceed against the vender:—but if the paper, endorsement, and signature are all found to be forged, then the court or authority should proceed

Penalty on pleaders filing on unstamped paper petitions, &c., required to be written on stamped paper;

2498. Every vakeel, or authorized pleader or mokhtar, attached to any court of judicature, who presents, for the purpose of being filed or recorded in any court or cutchery, any paper, petition, or any deed, instrument, or document, requiring to be stamped by the rules of this regulation, on unstamped paper, or on paper not bearing the proper stamp, and not duly endorsed, or on paper bearing a counterfeit stamp unless signed and endorsed by a vender as prescribed, is to forfeit five times the amount of the stamp which ought to have been used, or five times the difference in case of the use of improper stamps, as prescribed above. The said fine is to be imposed and levied by the presiding officer of the court in which the said vakeel or mokhtar is practising, and the amount is to be remitted to the collector, with copy of the proceedings or order imposing the fine. Reg. X. 1829, sect. 18, cl. 1.

to be imposed and levied by the court in which filed.

Fine cannot be remitted.

2499. It is not optional with the courts to remit the fine incurred by any party under the above provision. Const. No. 1120.

Persons sentenced under this regulation to be confined in civil jail, except venders convicted of extortion.

2500. Persons sentenced to imprisonment under the provisions of this regulation are to be confined in the dewanny jail; and the civil judge is to give effect to sentences passed by the proper authorities adjudging confinement. But stamp venders convicted of extortion, under cl. 9, sect. 10 [*i. e.* of taking from a purchaser a higher price than that denoted on the stamp sold, in which case the offender is to be sentenced by the collector or other covenanted officer qualified to take cognizance of the offence to 6 months' imprisonment] are to be forwarded to the magistrate of the district to be confined in the criminal jail. Reg. X. 1829, sect. 20.

Punishment of stamp vender rendering false account of the receipts and proceeds of sale of paper entrusted to him.

2501. If a true account of the receipts and of the proceeds of the sale of paper entrusted to him is rendered by a vender of stamps, when required to furnish it on his removal or resignation, only the penalty prescribed in cl. 11, sect. 10, Reg. X. 1829 [*i. e.* a certain fine to be imposed by the collector] is exigible for the non-delivery of paper or money due according to the account; but, if the account rendered is false, covering embezzlement or taking credit for remittances never made, the vender is liable, under the general regulations, to a prosecution in the criminal court for fraud and embezzlement. Const. No. 626. N. A. R. vol. 4, page 67.

according to the rule in other cases of forgery; *i. e.* the judge is to commit, if the paper is filed in any civil court; the collector, or other authority than a civil court, should make over the case to the magistrate; and the magistrate should proceed on it himself if filed before him.—For the punishment of persons guilty of forging stamps or stampt paper, or of using, issuing, or disposing of such, or of having such in their possession, see the preceding chapter "of coining."

CHAPTER III.

OF OFFENCES AGAINST THE POST OFFICE LAWS.

Exclusive right of conveying letters by post for hire is in the government; but licenses may be granted.

2502. The exclusive right of conveying letters by post for hire from place to place within the territories of the East India Company is in the governor general in council. But it is competent to him, and to any authority thereunto empowered by him, to grant to any person or persons a license, permitting such person or persons to convey letters by post for hire from place to place within the said territories, and it is lawful for any person or persons having such a license to convey letters in conformity with the terms of such license. Act XVII. 1837, sects. 2 and 3.

Person infringing this right as principal or accessary, how punishable.

2503. Whoever otherwise than under the authority of the governor general in council, or in conformity with the terms of such license, knowingly conveys any letter by post for hire from place to place within the said territories, or receives any letter or packet of letters in order to such conveyance, or delivers any letter according to its direction knowing the same to have been so conveyed, or is accessary to such conveyance, receipt, or delivery, is to be punished with fine not exceeding 50 rupees for every letter so conveyed, received, or delivered. Act XVII. 1837, sect. 5.

Explanation of term "by post."

2504. With reference to the term "by post" in the above provision, it was held that the mere conveyance of letters from place to place for hire on a consideration, constitutes the act made penal thereby. Const. No. 1288.

What constitutes an accessary before the fact in such case.

2505. The mere act of writing a letter which is forwarded by a private post does not necessarily subject the writer of it to punishment as an accessary to its conveyance. But if A delivers a letter to B for the purpose of his conveying it by post for hire from one place to another, and B so conveys it, A is an accessary before the fact to such conveyance within the meaning of the above provision. Const. No. 1263.

On the arrival of a vessel at any place where there is a government post office, the commander is to deliver all letters and packets as speedily as possible, either at the post office or to an authorized agent, and to get a receipt for them.

2506. When any vessel arrives by sea at any place within the said territories, at which there is a government post office, the commander of such vessel is as speedily as possible to cause every letter and packet on board of such vessel, which is directed to that place, and which was not especially entrusted for separate delivery, to be delivered either at the post office, or to some officer of the post office authorized to receive the same; and if there is on board any letter or packet directed to any other place, and not specially entrusted for separate delivery, the commander is as speedily as possible to report the same to the postmaster general, or postmaster of the place at which he has arrived, and is to act according to such directions as he receives from such postmaster general or post master; and the receipt of such postmaster general or postmaster is to discharge such commander of all responsibility in respect of such letter or packet. Act XVII. 1837, sect. 15.

Penalty of wilful disobedience to this rule.

2507. Every commander of a vessel, who wilfully disobeys any of the directions contained in the preceding paragraph, is to be punished with a fine not exceeding 1000 rupees. Act XVII. 1837, sect. 16.

2508. The commander of every vessel, leaving any place in the said territories by sea, is to receive on board of such his vessel every letter and packet which he is required to receive by any officer of the post office, and is to sign a receipt for such letters and packets; and every commander of a vessel, who wilfully disobeys any direction of this clause, is to be punished with a fine not exceeding 1000 rupees. Act XVII. 1837, sect. 20.

Penalty if commander of vessel refuses to receive letters and packets.

2509. Except as hereinafter is mentioned, if any person wilfully certifies or causes to be certified by writing on any letter, cover, or packet, delivered at any post office for conveyance by post what is not true in respect of such letter or packet, or in respect of its contents, for the purpose of defrauding the post office revenue, every such person is on conviction subject to a fine of 50 rupees for every such offence. Act XX. 1838, sect. 5.

Penalty for certifying in writing what is false regarding any letter, &c.

2510. Whoever sends or causes to be sent by the government post any packet of the description mentioned in table 2 of schedule A [*i. e.* law papers, accounts and vouchers, attested as such with the full signature of the sender] which contains any writing whatever other than writing which is necessarily part of the documents, which such packet is stated to contain by attestation on the cover of such packet, knowing that it contains any writing not necessarily part of the documents, which such packet is stated to contain by attestation on the cover, is to be punished with a fine of 50 rupees. Act XVII. 1837, sect. 9. Act XX. 1838, sect. 6.

Penalty for enclosing in an attested packet of law papers, &c. any writing not necessarily part of such documents.

2511. Whoever sends or causes to be sent by the government post any packet of the description mentioned in table 3 of schedule A [*i. e.* newspapers, pamphlets, and other printed or engraved papers, packed in short covers open at each end] which contains any writing whatsoever except the direction on the cover, knowing that it contains any writing other than the direction on the cover, is to be punished with a fine of 50 rupees. Act XVII. 1837, sect. 10. Act XX. 1838, sect. 7.

Penalty for sending newspaper, &c. containing any writing except the direction on the cover.

2512. The magistrate has no power to mitigate the fine of 50 rupees for the offences described in the two preceding paragraphs. Const. No. 1204.

Such fines cannot be mitigated.

2513. All fines incurred on account of letters or packets sent by the letter post or by the banghy post, in contravention of the above provisions [paras. 2509, 2510, and 2511] are to be demanded from the parties liable thereto by notice in writing from the post master general, or from any postmaster; and, if not paid upon such demand, the same is, upon conviction of the offender before any magistrate for the place where the party charged is residing, to be levied, together with the costs attending the information and conviction, by distress and sale of the goods and chattels of the party or parties offending, by warrant under the hand of such magistrate. And if upon the return of such warrant it appears that no sufficient distress can be had thereon, then it is lawful for any such magistrate, by warrant under his hand and seal, to cause such offender or offenders to be committed to prison there to remain for the space of two calendar months, unless such fines and all reasonable charges, attending the same, are sooner paid and satisfied. Act XX. 1838, sect. 8.

Mode in which such fines are to be realized,

on conviction before a magistrate by distress and sale,

or imprisonment for 2 months.

2514. If any postmaster general or postmaster suspects that any letter or packet lying for delivery at his post office contains any contraband article, or any article on

Post master how to proceed if he suspects that any letter or

packet contains any contraband article, or any writing in contravention of the above rules.

which duty is owing to government, or that any letter or packet lying for delivery at that post office, contains any writing in contravention of the provisions of sections 9 and 10 of this Act [paras. 2510 and 2511], it is lawful for such officer to summon the person, to whom the letter or packet is directed, to attend at that post office by himself or agent within 48 hours after the arrival of the letter or packet at that post office, and to open the letter or packet in the presence of the person to whom the letter or packet is directed, or of that person's agent; and if that person does not so attend by himself or agent, then to open the letter or packet in the absence of that person. Act XVII. 1837, sect. 30.

Fines above-mentioned how to be realized.

Prosecution must be instituted by post office authorities;

and originate with them.

2515. All fines incurred under any of the preceding provisions of this Act may be levied on conviction before any magistrate or justice of the peace, or before any person exercising the powers of a magistrate; provided always that no person, not a postmaster general, or postmaster, is competent to institute any prosecution for any violation of any of the preceding provisions of this Act. Act XVII. 1837, sect. 32.

2516. To legalize a conviction under the above provision the proceedings must originate with the post office authorities; and it is not sufficient that the magistrate or his police officers should, without any application or information from the post office department, apprehend persons offending against the Act, and then proceed with the acquiescence of the postmaster. Const. No. 1204.

Penalty for fraudulent appropriation of any letter or packet, or of its contents, or for opening any letter or packet with such intent.

2517. Whoever being in the employ of government in the post office department, or being in the employ of any person or persons who contract with government to convey letters or packets by post for hire, fraudulently appropriates any letter or packet which has been entrusted to him, or any thing contained in any such letter or packet, or opens any such letter or packet or any banghy box with the intention of fraudulently appropriating any thing therein contained, is to be punished with imprisonment with or without hard labor for a term not exceeding 7 years, and is also liable to fine. Act XVII. 1837, sect. 33.

Penalty for fraudulent appropriation of postage duty by one authorized to receive it.

2518. Whoever being in such employ, as is described above, and being entrusted to receive money for postage duty, fraudulently appropriates the same, is to be punished, on conviction before a magistrate, with imprisonment with or without hard labor for a term not exceeding 2 years, and is also liable to fine. Act XVII. 1837, sect. 34.

Penalty for fraudulently marking, or altering mark of, any letter or packet.

2519. Whoever being in such employ, as is described above, fraudulently puts any wrong mark on any letter or packet, or fraudulently alters or causes to disappear any mark which is on any letter or packet, is to be punished, on conviction before a magistrate, with imprisonment with or without hard labor for a term not exceeding 2 years and is also liable to fine. Act XVII. 1837, sect. 35.

Penalty for fraudulently preparing incorrectly, altering, secreting, or destroying any documents.

2520. Whoever being in such employ, as is described above, and being entrusted with the preparing or keeping of any document, with a fraudulent intention prepares that document incorrectly, or alters that document, or secretes or destroys that document, is to be punished, on conviction before a magistrate, with imprisonment with or without hard labor for a term not exceeding 2 years, and is also liable to fine. Act XVII. 1837, sect. 36.

2521. Whoever being in such employ as is described above, puts any letter or packet into the wallets of the post office, intending thereby to defraud the government of the postage duty on such letter or packet, is to be punished, on conviction before a magistrate, with imprisonment with or without hard labor for a term not exceeding 2 years, and is also liable to fine. Act XVII. 1837, sect. 37.

Penalty for inserting letters in the mail wallets with a view to defraud government.

2522. Sections 33 and 35 [and therefore also sections 34, 36, and 37] of Act XVII. 1837, are not applicable to European British subjects, resident in the mofussil, as those persons have not, by any Act of the legislature, been made amenable to the local authorities in the administration of the penal enactments of the government of India. Const. No. 1296.

The above provisions are not applicable to European British subjects in the mofussil.

2523. The agent of a dawk contractor was convicted of opening the government dawk wallet and extracting the telegraph, and altering the hour of arrival and despatch of the government mail with a view to defraud the government. This was held to amount to forgery, as described in cl. 3, sect. 4, Reg. II. 1807, but of a light nature.(a) Const. No. 1099.

Punishment for clandestine alteration of mail-telegraph.

2524. No public officer is to detain mails except a secretary to government acting by order; nor is a post master to delay the despatch of mails at the requisition of any public officer, except in a case of emergency duly certified; nor is any public officer to stop or open mails in transit except under similar emergency to be reported immediately to the nearest postmaster. Post office regulations, article 49, August 30, 1837.

Mails may not be detained, or stopped, or opened by public officers.

2525. The postmaster general is to report to the governor general in council, whenever any officer of government detains and opens the public mail, except under order of government; and the officer guilty of such an impropriety will be visited with the severe displeasure of the government. The magistrates are to restrain their police officers from stopping the dawk runners, while employed in the actual conveyance of the mails, on petty charges of misdemeanor being preferred against them. The runners employed in carrying the mails being all fixed servants, any process or summons can at any time be served upon them at their station, so that it can never be necessary to detain them while running with a mail. Govt. Order, October 3, 1838.

Contravention of this rule to be reported to government.

Dawk runners while in the actual conveyance of mails are not to be apprehended on petty charges of misdemeanor.

(a) This construction was held before the passing of Act XVII. 1837; and the case would seem now to fall within the provisions of section 36 of that Act; but there is this difference in the case cited, that the prisoner, having intercepted the dawk peon after the mail had been despatched from the post office, altered the telegraph surreptitiously, and not while he was intrusted with the preparation of it.

CHAPTER IV.

OF OFFENCES AGAINST THE OPIUM AND ABKAREE LAWS.

Police and other native officers.

Lists of opium cultivators to be furnished to magistrate.

2526. The opium agent is, as soon as practicable after the sowing season, to transmit to the magistrate a list of the cultivators, from whom he takes engagements to cultivate the poppy in each pergunnah, the number of beegahs specified in which engagements they are obliged to cultivate under certain penalties. Reg. XIII. 1816, sect. 11.

Copies of list to be furnished to police officers, who are to prevent illicit cultivation of the poppy.

2527. The magistrates, on receipt of the above lists, are to transmit to the several police darogahs, under their respective authority, a copy of the list of the cultivators residing in the pergunnahs within the respective jurisdictions of each darogah, with directions to prevent persons, who have not entered into engagements with the opium agent, from cultivating the poppy; and all darogahs, within whose jurisdictions there is no opium cultivation on the part of government, are to be annually instructed by the magistrates to use their endeavors to prevent the illicit culture of the poppy. Reg. XIII. 1816, sect. 29.

All native officers to give information of illicit cultivation of the poppy.

2528. All native officers of government of whatever description are strictly enjoined, under pain of dismission from office and such punishment as is especially prescribed, to give immediate information to the authority under whom they are placed of all poppy, which is illegally cultivated within their knowledge; and the magistrate, or other authorities above alluded to, who receive information of such illicit culture, are immediately to transmit the information so received to the officer in charge of the abkaree mehal. Reg. XIII. 1816, sect. 34. Reg. XX. 1817, sect. 29, cl. 9.

Police darogahs are to attach illicit crops, and to take security from the cultivator for his appearance, or to send him to the magistrate with the evidence for the prosecution.

2529. Whenever a police darogah obtains intelligence of any land within his jurisdiction having been cultivated with the poppy, excepting on account of government or with their sanction, he is immediately to proceed to the spot, and if the information is correct to attach the crop so illegally cultivated, and to report the same without delay to magistrate. He is, at the same time, to take security from the cultivator of the said ground for his appearance before the collector or other officer in charge of the abkaree mahal; and in the event of such cultivator not giving the required security, he is to send him in custody to the magistrate with the necessary witnesses to prove the quantity of land which has been cultivated by him with the poppy. Reg. XIII. 1816, sect. 35. Reg. XX. 1817, sect. 29, cl. 10 and 11.

Punishment of police or abkaree darogah conniving at the illicit cultivation of the poppy.

2530. Any police or abkaree darogah, who knowingly permits the cultivation of the poppy within his jurisdiction, or who in any respect is convicted of conniving at the illicit cultivation of the poppy, is, besides being liable to dismission from office for neglect of duty under the existing regulations, subject on conviction before the magistrate to the payment of a fine, to be calculated at the rate of 20 rupees per beegah for whatever quantity of land has been so illegally cultivated within his jurisdiction with his knowledge or connivance: the fine if not duly paid is commutable to imprisonment for a period not exceeding 6 months. Reg. XIII. 1816, sect. 36. Reg. XX. 1817, sect. 29, cl. 12.

2531. All native officers of government of whatever description, including chokeedars, pykes, or other officers of village police, are strictly enjoined to assist in preventing the illicit cultivation of the poppy, by giving instant information to the authority to which they are immediately subordinate, whenever it may come to their knowledge, that any land has been illicitly so cultivated:—and if any officer aforesaid neglects to give information as above directed, or connives in any respect at the illicit cultivation of the poppy, he is liable to the same penalty as is prescribed for darogahs in the preceding paragraph. Reg. VII. 1824, sect. 18, cl. 2.

All native officers to assist in preventing illicit cultivation: penalty in cases of neglect.

2532. Any subordinate officer of the opium agents, who is convicted of conniving in any way at the illicit cultivation of the poppy, is in like manner liable to dismission from office, and to pay, on conviction before the magistrate, a fine (commutable as above) calculated at the rate of 20 rupees per beegah for whatever quantity of opium has been so illegally cultivated with his knowledge and connivance, and likewise to imprisonment for a period not exceeding 6 months. Reg. XIII. 1816, sect. 37.

Punishment of subordinate officers of opium-agents conniving at illicit cultivation.

2533. All native officers of government of whatever description are strictly enjoined, under pain of dismission from office, and the penalties hereinafter specially provided [*i. e.* a certain fine to be adjuged by the officer in charge of the abkaree mahal], to assist in suppressing the illicit manufacture of opium by seizing the same, if authorized so to do, or if not vested with the power of seizure by giving immediate information to the authority to which they are respectively subject of all instances of such illicit manufacture of opium which come to their knowledge: any magistrate or other officer, to whom such information is given, is immediately to transmit the same to the collector or other officer in charge of the abkaree mahal. Reg. XIII. 1816, sect. 42. Reg. XX. 1817, sect. 29, cl. 9.

All native officers to assist in suppressing illegal manufacture of opium.

2534. All native officers of government of every description, and especially all such officers in the districts, within which or in the neighbourhood of which opium is manufactured on the public account, are strictly enjoined to assist to the utmost of their power in suppressing the illicit sale, purchase, importation, transportation, or possession of opium by seizing the same, if authorized to do so, or if not vested with the power of seizure by giving immediate information to the authority to which they are respectively subject of all instances of such illicit sale, purchase, importation, transportation, or possession of opium which comes to their knowledge: any magistrate or other officer, to whom such information is given, is immediately to transmit the same to the collector or other officer in charge of the abkaree mahal. And any native officer aforesaid, who connives at the illicit sale, purchase, importation, transportation, or possession of opium, or who neglects to give information in either of those cases, is, on conviction before the magistrate (if the native officer is subordinate to him, or in other cases before the collector or officer in charge of the abkaree mahal), liable to a fine not exceeding 8 rupees for each and every seer so sold, purchased, imported, transported, or possessed, with his knowledge or connivance, commutable in the event of its not being paid to imprisonment for a period not exceeding 6 months. And if the quantity of opium so sold, purchased, imported, transported, or possessed, cannot be ascertained, then and in that case the officer offending as aforesaid is

All native officers to assist in suppressing illicit sale, purchase, importation, transportation or possession of opium.

Punishment of native officer conniving at such, or neglecting to give information.

liable to a fine not exceeding 1000 rupees, commutable as aforesaid to imprisonment for a period not exceeding 6 months. Reg. VII. 1824, sect. 18, cl. 6. Reg. XIII. 1816, sect. 42. Reg. XX. 1817, sect. 29, cl. 9.

Police officers to be furnished with list of persons licensed to sell opium; and to apprehend and send in all persons engaged in the illicit sale of opium.

2535. The collectors or other officers in charge of the abkaree mahal are to furnish the abkaree darogahs and the darogahs of police with a list of the persons licensed to vend opium; and it is the duty of persons holding the office of abkaree or police darogahs to apprehend, and send in to the authority under whom they are placed, all persons engaged in the illicit sale of opium; provided however that it is their duty at the same time to send the necessary witnesses to prove the fact. In all cases in which such persons guilty of the illicit sale of opium, or in which ryots guilty of the illegal culture of the poppy, are sent in to the magistrate, it is his duty immediately on their arrival to send the persons so charged, together with the witnesses who have been sent along with them, to the collector or other officer in charge of the abkaree mahal. Reg. XIII. 1816, sect. 78.

Native officers in the employment of the agents or their deputies prohibited from taking fees, &c.

2536. Officers of every description in the employment of the agents or their deputies are prohibited from taking or receiving any fee, gratuity, perquisite, or allowance, either in money or effects, under any pretence whatever, from any ryots or other person employed or concerned in the provision of opium; and if any such description of person, subject to the authority of the agent, is convicted before the magistrate, within whose jurisdiction the offence has been committed, of disobedience to this prohibition, he is, besides being dismissed from his office by the officer or authority to which he is subject, to be further liable to imprisonment for any term not exceeding 6 months, which the court judges proper, together with such fine not exceeding 200 rupees as appears adequate to his offence, commutable if not paid to a further period of imprisonment not exceeding 6 months. Reg. XIII. 1816, sect. 12.

Penalty for disobedience to this prohibition.

Punishment of police officers conniving at unlicensed shops for sale of spirits, &c.

2537. Cutwals, darogahs of police, cutwals of military bazars, and other native officers invested with local jurisdiction, who authorize, support, countenance, or connive at the establishment of any unlicensed shop or shops in any place subject to their control or influence, besides being liable to dismission from office, are further subject, on conviction before the magistrate, to the payment of a fine not exceeding 500 rupees. The fine, if not duly paid, is commutable to imprisonment for a period not exceeding 6 months. Reg. VII. 1824, sect. 13, cl. 2.

Half the fine to be given to informer in such case.

Punishment of malicious information.

2538. Any person giving information, by which a native officer is prosecuted to conviction, is entitled to a moiety of the fine which is levied from the offender. But should it appear upon investigation that the information originated in malice, or in motives clearly vexatious and unwarrantable on the side of the informant, it is competent for the officer by whom the case is tried to impose such a fine as appears to be reasonable, not exceeding however in any case 50 rupees, or to order the offender to be imprisoned for a period not exeeeding 15 days.(a) Reg. VII. 1824, sect. 14.

(a) The authority referred to in sect. 7, Act XXV. 1840 as competent to punish persons wilfully and maliciously giving false information in respect to illicit stills, spirituous liquors, &c. is the abkaree superintendent, or other abkaree officer, and not the magistrate. This was held by the nizamut adawlut in a letter to the judge of Hooghly, No. 4525, December 31, 1841.

Magistrate to examine and seal the weights and scales used in opium warehouses.

2539. The weights and scales made use of in the kotees or ware-houses in the different pergunnahs, for weighing the opium received from the ryots, are to be sealed with the seal of the magistrate of the district, and examined annually by him, or by such person as he thinks proper to appoint for that purpose, during the month of January. The agents or their officers making use of weights or scales not so sealed, or knowingly using uneven scales or incorrect weights though sealed, are liable to such fine not exceeding 500 rupees as the magistrate thinks proper to impose The opium is to be fairly weighed in the presence of both parties by the beam being properly suspended to a triangle, or wooden stand or fixture; and every other mode of weighing is to be considered as illegal. Reg. XIII. 1816, sect. 13.

Penalty for use of uneven scales or incorrect weights.

Seizure and search.

What officers are empowered to seize all contraband opium with the cattle, &c. used in conveying it.

2540. The following officers possess authority to seize all opium, together with the cattle, carriages, boats, and other articles, which under the provisions of this regulation are liable to seizure and confiscation,(a) viz. the opium agents, their deputies and assistants,

(a) "All opium, excepting that which has been manufactured on account of the government, or sold by their authority, which is found within the provinces dependant on the presidency of Fort William, is to be considered as contraband, and is liable to seizure and confiscation, together with the boats, carriages, cattle, and packages, used in the storing or transport of it. *Reg. XIII.* 1816, *sect.* 39. The above is not to be considered as authorizing the seizure and confiscation of any opium, the produce or manufacture of a foreign state or country, which is found in the possession of any traveller or visitant from such foreign state or country, nor the seizure and confiscation of the carriages, cattle, or packages, on or in which the opium is found; provided that such opium does not exceed the quantity of two seers; and that it is bonâ fide intended for the private use and consumption of such traveller or visitant, or for the use and consumption of his attendants, and not for sale or traffic. Nor is the above provision to be considered as authorizing the seizure and confiscation of any opium the produce or manufacture of a foreign state or country, which is found in the possession of any dealers in horses from beyond the south west frontier of the conquered provinces travelling with a string of horses, nor the seizure and confiscation of the carriages, cattle, or packages, on or in which the opium is found; provided that such opium does not exceed the proportion of 10 sicca weight for each horse. Provided however that if any such traveller or visitant, or dealer in horses, at any time offers such opium for sale, or is proved to have at any time sold such opium, he is liable to all the penalties prescribed by Reg. XIII. 1816. Provided also that nothing contained in these clauses is to be considered applicable to persons fraudulently or clandestinely importing foreign opium into the provinces dependant on the presidency of Fort William in violation of the law. All such persons are subject to the penalties, which are or may be prescribed for illicit dealings in opium. *Reg. XI.* 1818, *sect.* 2, *cls.* 1, 3, *and* 4. All boats, carriages, bales, casks, chests, boxes, or packages, on which or in which any contraband opium is loaded or concealed, together with all horses, bullocks, or other cattle employed in its transportation, are liable to confiscation; and they are to be delivered to the collector of the zillah or other officer in charge of the abkaree mahal. *Reg. XIII.* 1816, *sect.* 44. No person not appointed or licensed to vend opium by the collector or other officer in charge of the abkaree mahal, or not otherwise duly authorized by government, is to have in his possession a greater quantity of opium than 5 tolas weight of the weight in use at the public shops in the district; and that quantity must be of opium duly manufactured on account of government, or sold by its authority, and must be intended for private use and consumption, and not for sale or traffic. If a greater quantity of opium than that above specified is found on or in possession of any person not duly authorized, and not being of the description specified in sect. 2 of this regulation [noted above], the opium is to be considered contraband, and is liable to confiscation, together with the animals, carriages, and articles of whatever description, on or in which it is found. But native medical practitioners, or other individuals, may be licensed to retain in their possession for medical purposes a larger quantity of opium than 5 tolas weight: parties receiving such licenses, however, are in no case to sell or give any of the opium, unless for the purpose of its being bonâ fide administered under their own directions as medicine in cases of actual sickness duly ascertained by them. *Reg. XIII.* 1816, *sect.* 76 *modified by sect.* 3, *Reg. XI.* 1818. The above section does not apply to authorized opium cultivators, having newly extracted opium in their possession, during the usual period between the full growth of the poppy and the delivery of the opium to the agent. *Reg. XIII.* 1816, *sect.* 77.

magistrates, collectors of land revenue or officers in charge of the abkaree mahal, or both where the officers are separate, collectors and deputy collectors of customs, superintendents of salt chokees, and their subordinate officers respectively being above the rank of peons, burkundazes, or ordinary chuprasies*; provided however that no person is to break open any boat, carriage, chest, cask, box, bale, package, or other article suspected to contain opium, except under a warrant from the magistrate, or collector of the district, or other officer in charge of the abkaree mehal; and any person detaining on such suspicion, otherwise than under the orders of one of these two last mentioned officers, any boat, carriage, cask, chest, box, bale, or package, is liable, if no contraband opium is found, and if the detention appears to have been made without sufficient cause, to be adjudged by the collector or other officer in charge of the abkaree mahal to pay to the party injured the damages he has sustained by such detention. Provided further that all native officers making a seizure under the powers vested in them by this regulation, are, within 24 hours of making such seizure, to communicate their having done so, with a report of the circumstances connected with the seizure, to the authority to which they are respectively subject; and any magistrate or other officer to whom a seizure is thus communicated is immediately to transmit the report to the collector or other officer in charge of the abkaree mahal, to whom all opium so seized is to be delivered. Reg. XIII. 1816, sect. 41.

* *Government may grant such powers to any other public officers or other persons. Reg. VII.* 1824, *sect.* 17, *cl.* 1.

Boats and packages not to be broken open except under warrant of magistrate or officer in charge of the abkaree mahal.

Collector or magistrate may seize, detain, and search, all boats, &c. suspected to contain opium.

2541. The collector or other officer in charge of the abkaree mahal, together with the magistrate of the district, is authorized to seize, detain, and search all boats, carriages, bales, chests, and packages of every description, in which he has sufficient grounds to suspect that opium is concealed. Reg. XIII. 1816, sect. 83.

Punishment of persons preventing seizure of contraband opium, or opposing officers in execution of that duty.

2542. Any person, who by force or threats, prevents an officer from effecting the seizure of any opium suspected to be contraband, or who forcibly resists such officer in the execution of that duty, is, in addition to the penalty prescribed for cases of connivance(a), liable, on conviction before a magistrate, to a fine not exceeding 1000 rupees. Parties so offending are further liable, in the event of any affray or other breach of the peace occurring in consequence of their resistance, to be punished under the general rules applicable to such cases. Reg. VII. 1824, sect. 18, cl. 7.

Officer about to seize contraband opium, and fearing resistance, how to proceed. Police officers to assist such officers;

2543. If any officer, authorized to attach opium, has seized, or is about to seize, any despatch of opium on information or suspicion of its being contraband, or has effected, or is about to effect, the attachment of the cattle, carriages, or boats used in transporting such opium, and has reason to apprehend forcible resistance, such officer is to apply to the nearest darogah to aid him in the execution of his duty; and all darogahs or other officers, in charge of thanas or chokees, to whom such application is made, or who otherwise have reason to apprehend the occurrence of a breach of the peace in consequence of a seizure of opium, are immediately to afford the requisite aid to effect the seizure and preserve the peace. Reg. VII. 1824, sect. 18, cl. 8.

(a) The penalty for connivance can be awarded by the magistrate only when the offender is a darogah or other native officer of government. *See ante.*

2544. Such seizures are to be made on the responsibility and at the risk of the officers authorized to seize; and the police officers are not competent to exercise any discretion in regard to the propriety or otherwise of the seizure, which they are called upon to support, but are to be careful to prevent any unnecessary violence. Reg. VII. 1824, sect. 18, cl. 9.

and not to exercise any discretion as to the propriety of such seizure.

2545. Whenever the collector or other officer in charge of the abkaree mahal requires the assistance of police darogahs or other police officers in the apprehension of persons charged before them, in attaching crops or seizing contraband opium, or generally in serving any process, he is to apply by roobakaree to the magistrate, who is authorized and enjoined to cause his police officers to carry the requisition of the collector or officer aforesaid into effect, as far as is practicable and consistent with law. Reg. XIII. 1816, sect. 90.

Officer in charge of abkaree mahal requiring the assistance of police officers how to proceed.

2546. A magistrate, in his magisterial character, possesses no authority to direct the search of any house for the discovery of contraband opium *as such;* but he is not restricted from searching houses for the discovery of opium, or any other deleterious drug, which, from information before him, he has reason to believe has been used as an instrument of death, and of which he considers it essential to the ends of justice that a discovery should be effected. Const. No. 1241.

In what cases the magistrate may search houses for contraband opium.

2547. Whenever an officer on a collector's establishment, duly authorized to distrain property on account of arrears of revenue, due from any manufacturer or vender of spirituous liquors, tauree, putchwye, or intoxicating drugs, including opium, is resisted in the enforcement of the collector's process, he is, on certifying such resistance on oath before a darogah of police, to receive the aid of the regular police officers of the thana in effecting the attachment; and the police officers are to be guided in their proceedings in regard to entering and searching houses for property, belonging to defaulters, by the rules prescribed in this regulation for their conduct in cases of distraint for arrears of land rent,* as far as the same are applicable. Reg. XX. 1817, sect. 28, cl. 1.

Abkaree officers are to be supported by regular police officers in distraining property of abkars, &c.

* *v. para.* 1194 *et seq.*

2548. It is the duty of the magistrates, darogahs of police, and other officers of that department, to support the officers of the collectors in the discharge of the duty which is delegated to them under this section [*i. e.* the execution of search warrants issued by the officer in charge of the abkaree mahal for the discovery of unlicensed stills, or of the produce of such stills]: provided however that nothing contained in these rules is to be construed to authorize the collector's officers or the officers of police to enter the zenana or apartments of the women, in houses belonging to persons of respectability and credit, that is, of all those classes whose women do not ordinarily appear in public. Reg. X. 1813, sect. 24, cl. 4. Reg. XX. 1817, sect. 28, cl. 2 and 3.

Magistrate and police officers to support the abkaree officers in searching houses for illicit stills, &c.

Zenanas of respectable persons not to be entered.

2549. Such search warrants are to be executed only in the day time, that is between sun-rise and sun-set, and, if possible, in the presence of two or more respectable inhabitants of the village, in which the house or place proposed to be searched is situated. Reg. X. 1813, sect. 24, cl. 2. Reg. XX. 1817, sect. 28, cl. 3.

Such search warrants how to be executed.

2550. If any officer of the abkaree department is convicted before the magistrate of any district of having vexatiously and unnecessarily seized the goods of any person on the

Punishment of officers of abkaree department unnecessa-

rily seizing goods, arresting any person, or committing other excess.

pretence of seizing or searching for illicit stills, spirituous liquors, intoxicating drugs, or the materials for manufacturing the same, or of having vexatiously and unnecessarily arrested any person, or of committing any other excess not required for the execution of his duty, every such officer, is, besides dismissal, to be punished with imprisonment not exceeding 6 months, and with fine not exceeding 200 rupees, commutable if not paid to a further imprisonment not exceeding 6 months. Act XXV. 1840, sect. 12.

Explanation of term "officers employed in the abkaree department."

2551. Whenever in this Act, or in any other law, the terms "officers employed in the abkaree department" are used, they are to be deemed and construed to apply to such officers as receive salary from and are appointed by the persons in charge of the abkaree department in the district, or such officers as the commissioner of the abkaree revenue empowers by special delegation or appointment to act in relation to this branch of the revenue. Act XXV. 1840, sect. 13.

Punishment of persons preventing lawful arrest, or procuring release by unlawful means, or obstructing officers searching for illicit articles, or rescuing such articles, or resisting execution of legal process.

2552. Except in cases already provided for by sect. 18, Reg. VII. 1824, if any person or persons by threats or violence prevent the lawful arrest of any person by an officer duly authorized to seize illicit stills, fermented or spirituous liquors, or intoxicating drugs and materials for the manufacture of the same; or procure by unlawful means his release after arrest; or obstruct any officer duly authorized in making search for or seizure of any of the above mentioned illicit articles; or rescue such articles after seizure; or if the party found with any such illicit articles in possession, or any other person, or persons resist such officer in the execution of a legal process; such person or persons are severally and respectively liable, on conviction before a magistrate, to be sentenced for the same to pay a fine not exceeding 500 rupees, commutable if not paid to imprisonment for a term not exceeding 6 months; provided that such person or persons are further liable, in the event of an affray or breach of the peace occurring in consequence of his or their resistance, on conviction of the same before a competent tribunal, to such punishment as is prescribed in the general rules applicable to cases of affray and breach of the peace in addition to the penalties above prescribed for resistance of process. Act XXV. 1840, sect. 6.

Abkars.

Licensed venders not to harbour robbers &c.; nor to keep their shops open between sunset and sunrise; nor to harbour persons at night.

2553. The licensed venders of spirits and drugs are bound, by the conditions of their licenses, not to harbour robbers, thieves, or riotous persons, nor to receive any goods or wearing apparel in barter for liquors or drugs; they are also bound not to open their shops before sun-rise, nor to keep them open after sun-set; and are enjoined not to harbour any person in their shops during the night, but to give information to the nearest magistrate or police officer of any suspected persons who resort to their shops. Reg. XX. 1817, sect. 28, cl. 4.

Police officers to report any breach of the above rules.

2554. The darogahs of police are enjoined to report to the magistrate any breach of the foregoing conditions which come to their knowledge. They are also to proceed against any licensed vender of spirits or drugs, who is charged with a criminal offence cognizable by them, according to the general rules in force, which are applicable to the charge. Reg. XX. 1817, sect. 28, cl. 5.

Disorderly conduct and offences committed by abkars.

2555. The magistrates are competent to take cognizance of any disorderly conduct, breach of the peace, or other public crime or misdemeanor committed by any of the persons to whom this regulation refers [*i. e.* licensed venders or manufacturers of spirits, &c. and

other persons employed in the abkaree department]. In all cases of that nature, the magistrates are to be guided by the general rules, which have been or may be established for the apprehension and punishment of public offenders. Reg. X. 1813, sect. 32.

2556. The mere keeping open of liquor shops at late hours is not within the meaning and intent of the term "disorderly conduct;" and, consequently, is not punishable by the magistrate under the above provision. But if any breach of the peace or other misdemeanor occurs, in consequence of such keeping open of the shops during prohibited hours, the conduct of the abkar may be considered disorderly, and himself consequently liable to the penalty provided for disorderly conduct. Const. No. 1345.

Keeping a shop open during prohibited hours is not in itself an offence punishable by a magistrate.

2557. All persons sentenced to imprisonment under the provisions of this regulation, and all persons confined for non-payment of the fines to which they are liable, are to be confined exclusively in the dewanny jail. Reg. XIII. 1816, sect. 92.

Persons punished under these provisions to be imprisoned in civil jail.

2558. The warrant of any officer authorized or especially appointed to adjudicate cases of contravention of the abkaree laws, certifying the conviction of any individual, with a specification of the offence proved and penalty adjudged, is to be authority for the levying of any fine imposed, as therein specified, and for the detention of the person therein described in the civil jail of the district as is therein prescribed. Act XXV. 1840, sect. 4.

The warrant of abkaree officer, with specification of sentence, sufficient for detention of persons in the civil jail.

CHAPTER V.

OF OFFENCES AGAINST THE SALT LAWS.

2559. All suits, complaints, and informations for the recovery of any fine or penalty recoverable by government, or by the informer, on account of the illicit manufacture, sale, purchase, importation, transportation, or possession of salt, excepting complaints or charges preferred against public officers for a breach of their official duty, of which the cognizance is specifically reserved to the judges or magistrates, and excepting cases of adulteration of salt, are cognizable in the first instance by the salt agents and superintending officers of salt chokees, any thing in the existing regulations to the contrary notwithstanding. Reg. X. 1819, sect. 96.

Venue.

What cases regarding salt lie to the salt agent, and what to the magistrate, and civil judge.

2560. All native officers of government of whatever description, including all chokeedars, pykes, and other officers of village police, are strictly enjoined to assist in suppressing the illicit manufacture of salt, by giving instant information to the authority to whom they are immediately subordinate, whenever it comes to their knowledge that any illicit kalary or salt work has been, or is about to be established in any village: and if any officer aforesaid neglects to give such information, or in any respect connives at the illicit manufacture of salt, such officer, besides being liable to dismission from office, is further subject, on conviction, to the payment of a fine* not exceeding 500 rupees for each kalary or salt work established or worked with his knowledge or connivance. Reg. X. 1819, sect. 34.

Illicit manufacture, &c.

All native officers to assist in suppressing illegal manufacture of salt, under penalty.

* *To be adjudged by the salt officers, under sect. 109.*

Magistrate to forward information to salt officers.

2561. Magistrates or other authorities, who receive information of the establishment of any illicit kalary, are immediately to transmit the information so received to the nearest salt agent or superintendent of salt chokees. Reg. X. 1819, sect. 35.

All native officers to assist in suppressing illicit sale, transportation, possession, &c. of salt, under penalty.

2562. All native officers of government of whatever description, and especially all such officers in the districts within which, or in the neighbourhood of which, salt is manufactured on the public account, or in those in which salt chokees are established, are specially enjoined, under pain of dismission from office, and the penalties herein specially provided, to assist in suppressing the illicit sale, purchase, importation, transportation, or possession of salt, by seizing the same if authorized to do so, or if not vested with the power of seizure by giving immediate information to the authority to which they are respectively subject of all instances of such illicit sale, purchase, importation, transportation, or possession of salt which come to their knowledge. Any magistrate or other officer, to whom such information is given, is immediately to transmit the same to the salt agent, or superintending officer of salt chokees. Any native officer aforesaid, who neglects to give information in the cases above specified, or who in any manner connives at the illicit sale, purchase, importation, transportation, or possession of salt, is, on conviction, liable to a fine* not exceeding 5 rupees for each and every maund of salt so sold, purchased, imported, transported, or possessed with his knowledge or connivance. Reg. X. 1819, sect. 54.

Magistrate to transmit information to salt officers.

* *To be adjudged by the salt officers, under sect.* 109.

Police officers to give information to the nearest salt officer, and to the magistrate, of illegal importation, transportation, manufacture, or adulteration of salt.

2563. If any officer of police receives information of any salt, not made in the Company's provinces, having been illegally imported into the said territories; or of salt of any description being transported without the proper rowannahs or char chitties; or of any salt being manufactured on account of individuals by molungees, or other persons, at the kalaries or salt works established by individuals for the purpose of manufacturing salt on their own account, or that of any other person; or of the adulteration of salt by mixing it with the substance called "kharee noon," or other substance such as "natron" or native fossil alkali, or the vegetable alkali or potash; such police officers are to transmit immediate notice thereof to the nearest officer in the salt department empowered to attach contraband or adulterated salt, and to the magistrate to whose immediate orders they are subject. Reg. XX. 1817, sect. 29, cl. 6.

Seizure.

Penalty for persons resisting salt officers attaching salt;

* *For rule for commutation of fine, see para.* 2603.

2564. Any person, who by force or threats, prevents an officer of the salt department, or other officer authorized to attach salt, from effecting the seizure of any salt suspected to be contraband or adulterated, or who forcibly resists such officer in the execution of that duty, is liable, on conviction before a magistrate, to a fine not exceeding 200 rupees. Parties offending are further liable, in the event of an affray or other breach of the peace occurring in consequence of their resistance, to be punished under the general rules applicable to such cases. Reg. X. 1819, sect. 56.

or arresting parties.

2565. If any person, by threats or violence, prevents the lawful arrest of any person by an officer duly authorized to seize salt, or procures his release after arrest, or if the party found with the salt in possession or any other persons resist any such officers, they are severally and respectively liable to the punishment prescribed in the preceding paragraph. Act XXIX. 1838, sect. 19.

Salt officers attaching salt, who fear resistance, to apply to the police for aid.

2566. If any officer authorized to attach salt has seized, or is about to seize any despatch of salt, on information or suspicion of its being contraband, or has effected or is about to effect the attachment of the cattle, carriages, or boats used in transporting such salt, and has reason to apprehend forcible resistance, such officer is to apply to the nearest darogah to aid him in the execution of his duty; and all darogahs or other officers in charge of thanas or chokees, to whom such application is made, or who have otherwise reason to apprehend the occurrence of a breach of the peace in consequence of a seizure of salt, are immediately to afford the requisite aid to effect the seizure and preserve the peace. Reg. X. 1819, sect. 57.

The police officers are to comply with such applications.

2567. The officers of police, as required by the above provisions(a), are to comply with applications made to them by a salt agent, or superintendent of a salt chokee, or by the officers attached to the salt department, or by any collector of revenue or customs, for assistance in effecting the seizure of salt illegally imported, manufactured, sold, or transported; and also for the seizure of adulterated salt, and for the attachment of the cattle, carriages, or boats used in transporting such salt. Reg. XX. 1817, sect. 29, cl. 5.

In such case no responsibility attaches to the police.

2568. Such seizures are to be made on the responsibility and at the risk of the officers authorized to seize, and the police officers are not competent to exercise any discretion in regard to the propriety or otherwise of the seizure, which they are called upon to support; but are to be careful to prevent any unnecessary violence. Reg. X. 1819, sect. 58.

Police officers are not to seize salt in the first instance of their own authority, unless specially empowered so to do,

* *v. para.* 2563.

2569. The police officers are to confine themselves to sending the information aforesaid* to the nearest officer in the salt department, and to the magistrate, and to assisting in the seizure of the salt, either under the orders of the magistrate or on application from the officers of the salt department; and are not to seize or detain any salt in the first instance of their own authority, except when they have been vested by government with special authority for making such seizures, in which case they are to receive separate instructions for their guidance in the performance of that duty. Reg. XX. 1817, sect. 29, cl. 7.

under penalty of dismission, and damages to be adjudged by the civil court.

2570. In all cases, in which it appears that an attachment or seizure of salt has been made by an officer of police without the special orders of the magistrate, or on application from any public officer authorized to require the assistance of the police officer, by whom such attachment is made; he is liable to dismission from office, and, on the institution of a regular suit in the dewanny adawlut on the part of the proprietor, to the payment of full damages to the whole amount of the loss and expense to which the proprietors have been subjected. Reg. XX. 1817, sect. 29, cl. 8.

Salt agent or superintendent attaching contraband salt in

2571. On receiving certain information that contraband salt is stored in any place situated in the tract of country(b) in Bengal or Orissa within which the transportation of

(a) In the original is quoted cl. 2, sect. 11, Reg. VI. 1801; but the whole of that regulation is repealed by Reg. X. 1819, and the provisions quoted in the text have been enacted instead.

(b) Such tract does not extend, within the delta of the Ganges and Megna rivers, beyond the line of the reach of the tides in the rivers communicating with the Bay of Bengal as taken at spring tides in the dry season;

store within certain limits to summon the nearest police darogah to attend.

salt without rowannah is not lawful, the salt agent or superintendent of chokees, is to proceed to seize it in person, if the place of such store is not too distant, together with the informant, summoning by written notice the nearest police darogah or other officer in charge of the police thana or station to attend likewise, and witness the proceeding. Act XXIX. 1838, sect. 3.

Salt agent or superintendent, having a police officer in company, may break open the door of the store-house.

2572. For the purpose of making seizure of salt in store so informed against, it is competent to any salt agent or superintendent, having a police officer in company, to break open the door of the house, ware-house, or other place in which the salt is stated to be stored, if, upon requisition duly made, the door is not immediately opened by the owner or occupant thereof. Act XXIX. 1838, sect. 4.

The salt agent or superintendent may depute an officer, if he cannot proceed in person.

2573. If the salt agent or superintendent is not able to proceed in person to make a seizure of salt in manner above provided, he is to send along with the informer one or more confidential officers of his public establishment, not being under the rank of a jemadar of peons, giving to such officer or officers his warrant ordering and authorizing the seizure, and sending notice as above prescribed for the police darogah or other police officer to attend; and the officer so deputed has power to act in like manner as is provided for the agent or superintendent in person; provided that the door of no house, warehouse, or other place, is to be broken open to make a seizure of salt except in the presence of a salt agent or superintendent of chokees, or of an officer so specially deputed, and of an officer of police. Act XXIX. 1838, sect. 5.

Forcible entry illegal, except in the presence of certain officers.

But the head officer of a salt chokee or aurung may act for the agent if the place is more than 3 kos from the station of the agent or superintendent.

2574. It is competent to the head officer of any salt chokee, or aurung for the manufacture of salt, on receiving information of salt exceeding one maund in quantity being in store in a house, ware-house, or other place, to act thereupon as provided in sects. 3 and 4 for the salt agent and superintendent, provided that the place of store described in such information is situated at a distance of more than three kos from the station of a salt agent or superintendent of chokees, or from the place where the salt agent or superintendent may be. Act XXIX. 1838, sect. 6.

Penalty if police officers refuse to attend on such application, or in any way frustrate the object of the search and seizure.

2575. If the darogah, or person in charge of any police station or thana, receiving notice to attend at a seizure of salt in store, as is above prescribed, does not attend or attending refuses to act in aid of the seizure, or in any way wilfully frustrates the object of the search and seizure, such darogah or other officer is, on representation of the facts by the officers of the salt department, and on conviction of the same before the magistrate of the district, besides being dismissed from office, liable to a fine equal to the amount of fine that would have been leviable on the owners of the salt, if it had been seized according to the information laid. Act XXIX. 1838, sect. 7.

Rules for breaking open any house, &c.

2576. Whenever it is necessary to break open any house, ware-house, or other place, to effect a seizure of salt, the rules and precautions prescribed in Reg. XX. 1817, and

nor, eastward of the Megna, north of the river Goomtee; nor, westward of the river Hooghly, beyond a line drawn from a point on that river distant one mile from the northern end of the town of Nyasurai, and to the north thereof, to a like point distant one mile to the north of the town of Guttaul, and thence to a like point distant one mile to the north of the town of Midnapore, and thence to a like point distant one mile to the north of Huldipookur in Singbhoom, so as to include each of those towns respectively. Act XXIX. 1838, sect. 33.

sect. 10, Reg. VII. 1799*, for breaking into a house for execution of process of distraint, are always to be observed by the police officers in attendance; provided however that the responsibility for the act, and the determination whether to require the door to be broken open or not, rest with the officers of the salt department only. Act XXIX. 1838, sect. 8.

* *v. page* 217.

No responsibility rests with the police in such cases.

2577. If the seizure is made by an officer of the salt department other than an agent or superintendent of chokees, such officer is to report the circumstances within twenty-four hours to his official superior; and the police officer in attendance is likewise to report the occurrences at the time of seizure to his official superior. Act XXIX. 1838, sect. 10.

Reports to be made by the salt, and police officers;

2578. The salt officer bearing the notice as aforesaid, and the police officer receiving such notice, are to specify in their respective reports the date and exact time when the notice was delivered to the latter: and if any delay occurs in effecting the search, the said officers are to record the circumstances at full length in their respective reports. Reg. X. 1819, sect. 62.

in which the date and time of delivering the notice to the police officer is to be noted.

2579. The authority to seize salt, and other articles liable to seizure and confiscation, under the rules of this regulation, is to be exercised, in virtue of their offices, by salt agents and superintendents of salt chokees, and their assistants, uncovenanted European and subordinate native officers. But government has the power of vesting a like authority in such of the magistrates, collectors, or officers of the customs, abkaree, and opium departments, and their subordinate officers respectively, as is deemed fit. Reg. X. 1819, sect. 71, cl. 1.

Power to seize salt vested in whom.

2580. Provided, however, that all uncovenanted European or native officers, making a seizure under the powers vested in them by this regulation, or by the special orders of government, are within 24 hours after making such seizure to communicate their having done so, with a report of the circumstances connected with the seizure, to the authority to which they are respectively subject; and the magistrate or other officer to whom information of a seizure is thus communicated, is immediately to transmit the report to the nearest salt agent or superintending officer of salt chokees, to whom all salt so seized is to be delivered. Reg. X. 1819, sect. 71, cl. 2.

If such power is vested in subordinate officers of magistrate, they are to report to him within 24 hours after making seizure.

2581. The salt officers being alone empowered to attach of their own authority, and by virtue of their offices, salt which they know or suspect to have been illegally manufactured, imported, sold, or transported, no officers excepting those above described are to seize or detain salt, unless specially vested by government with authority to that effect. Reg. X. 1819, sect. 72.

None but officers so empowered can make seizure.

2582. Whenever any of the native officers subordinate to a magistrate, collector, or officer in charge of the abkaree mahal, or a collector or deputy collector of customs, who are specially authorized by government to seize salt, receive information of any salt not made in the Company's provinces of Bengal and Orissa, on account of government, having been illegally imported into the said territories; or of salt of any description being transported or stored within the limits of the salt chokees without the proper rowannah(a),

Subordinate native officers so empowered how to proceed on receiving information of the illegal importation, transportation, or manufacture of salt.

(a) A *rowannah* bears the seal of the salt office and the signature of the secretary or one of the covenanted assistants attached to the board of customs, salt, and opium. It specifies the quantity of salt intended to be transported under it; the date of the sale; and number of the lot in part or in full of which the salt is deliver-

chalan(b), charchitties(c), or special pass(d); or of any salt being manufactured on account of individuals by molungees or other persons at the kalaries, or salt works established on account of the Company, or at any kalaries or salt works established by individuals for the purpose of manufacturing salt on their own account, or that of any other persons; the several officers aforesaid are, as above directed, to transmit immediate notice thereof to the nearest officer in the salt department, empowered to attach contraband salt, and to the magistrate or other functionary to whose immediate orders they are subject, and are further to be guided by the following rule. If the salt is accompanied by a regular rowannah, chalan, charchitty, or special pass, the native officers are to confine themselves to sending the information aforesaid to the nearest officer in the salt department, and to the European functionary to whom they are subordinate, and to assist in the seizure of the salt either under the orders of their immediate superior, or on application from the officers of the salt department, and are not to seize or detain any salt accompanied by such papers in the first instance of their own authority; but if any despatch of salt is unaccompanied by the rowannah, chalan, charchitty, or special pass as aforesaid, the said officers are empowered of their own authority to detain the salt, sending without delay notice of the detention of the salt to their superior, and to the nearest officer in the salt department. Any native officer of government (not being an officer attached to the salt department) unless specially authorized to do so, as well as any such officer, who, though specially authorized as above, seizes or detains salt accompanied by a regular rowannah, chalan, charchitty, or special pass, is liable to be dismissed from his office; and to be prosecuted for damages in the dewanny adawlut by the owner or holder of such salt. Reg. X. 1819, sect. 73.

Penalties for breach of these rules.

If salt has been seized by order of magistrate, he is em-

2583. If salt has been seized by the officers or under the orders of a magistrate, or by the orders of any collector of revenue or customs, or deputy collector, or any officer

able; the mode of conveyance; the place to which the salt is to be transported; and the route by which it is to be conveyed. Such rowannahs are current for only one year from their date, after which they are wholly null and void, and in no degree protect any salt which they accompany. Reg. X. 1819, sect. 36, cl. 2.

(b) A *chalan*, in all practicable cases, is to be signed by the agent or other European officer in charge of the golahs, as well as by the darogah or other head native officer of the golah station at which the salt is delivered. It specifies the quantity of salt laden on the boat, vessel, or karroo of bullocks; the date of the sale; and number of the lot in part or in full of which the salt is delivered; the name of the original purchaser at the sale; and of the present proprietor of the salt; the number of the rowannah by which the salt is covered, and the total quantity of salt covered by the same; the name of the gomashtah who receives the salt; of the proprietor of the boat, vessel, or karroo of bullocks on which the salt is laden; and of the manjee, sarang, or sirdar in charge of such boat, vessel, or karroo; the description, burden, and number of oars of the boat or vessel, and the number of bullocks in the karroo; also the place of destination of the salt. Reg. X. 1819, sect. 36, cl. 4.

(c) A *charchitty* has affixed to it the signature of the darogah or mohurrir of the salt chokee whence it was issued, and specifies the quantity of salt covered by it, which quantity must be less than 100 maunds of 82 sicca weight to the seer; also the time for which it is current, which is never to exceed 6 months; the number of the rowannah from which the salt is written off; and the limits within which the salt is to be sold. The charchitty is current only within the limits subject to the control of the darogah by whom it has been granted, and does not cover salt in its transit through the chokees subordinate to any other darogah. Reg. X. 1819, sect. 36, cl. 5 and 6.

(d) A *special pass*, or *atrafee rowannah*, for the conveyance of salt not exceeding 100 maunds to any place beyond the line of the chokees within which the salt is stored, is duly registered, signed, and sealed by the secretary to the board of customs, salt, and opium, or one of the covenanted assistants of the board, as a rowannah. Its currency in no case exceeds the period of 6 months. Reg. X. 1819, sect. 36, cl. 7 and 8.

in charge of the abkaree mahal or opium agent or his deputy, previously to the delivery of such salt to the officers of the salt department, and such magistrate, collector, or other officer aforesaid, is of opinion that the salt was seized on false or erroneous information, and that the salt is not liable to confiscation, he is empowered to release the salt. Reg. X. 1819, sect. 75, cl. 3.

powered to release it before delivery to the salt officers.

2584. The magistrates are to cause to be communicated, in the manner which appears to them most convenient, to the salt agent or superintending officer of chokees, the particulars of all information received from the police officers, and also of all applications made to those officers by the officers in the salt department, or by any officer empowered to attach salt, for assistance in the seizure of salt. Reg. X. 1819, sect. 76.

Magistrates to communicate to agent all information regarding salt received from police officers.

2585. Whenever salt is seized as contraband, because unaccompanied by any rowannah or other protecting document, the person or persons conveying or having in charge the same are to be apprehended; and all officers who are empowered to seize salt under the above provisions are likewise competent to arrest the parties found with or having the salt in possession. Act XXIX. 1838, sect. 12.

When contraband salt is seized, the persons conveying it are to be arrested.

2586. It is lawful for the salt agents and superintendents of salt chokees, and other officers, who are duly empowered to seize salt, to stop and search any boats or vessels of a build adapted for sea navigation, that are found within the limits described in sect. 33*; and if salt is found thereon, not accompanied by the necessary rowannah or other protecting document, to detain the vessel with the crew thereof, and to take them for adjudication of the case to the nearest accessible station of an officer empowered to adjudicate cases of contravention of the salt laws. Act XXIX. 1838, sect. 13.

Officers empowered to seize salt may stop and search certain vessels.

* *v. note to para*: 2571.

2587. Whenever any person is arrested by an officer of the salt department, or by any other officer of other departments, duly empowered to make a seizure of salt, the person making the arrest is bound to carry the party arrested direct to the officer of the salt department, who is competent to try the case; and no person so arrested is to be released, until the case has been brought to judgment in the manner provided by law. Act XXIX. 1838, sect. 21.

Persons arrested are to be carried direct to the nearest salt officer competent to try the case; and once arrested are not to be released.

Misconduct of salt officers.

Penalties for an officer in salt-employ taking fees, or misappropriating advances entrusted to him, or taking or receiving false receipt.

2588. Officers of every description in the employment of salt agents, or superintending officers of salt chokees, are prohibited from taking or receiving any fee, gratuity, perquisite, or allowance, either in money or effects, under any pretence whatever, from any molungee, or other person employed or concerned in the manufacture of salt: and if any such description of person subject to the authority of the salt agent, or superintending officer, is convicted before the magistrate, within whose jurisdiction the offence has been committed, of disobedience to this prohibition, he is to be adjudged by the court to refund the money or things so taken or received; and, besides being dismissed from his office by the officer or authority to which he is subject, he is further liable to imprisonment for any term not exceeding 6 months, which the court judges proper, together with such fine (not exceeding 500 rupees for every 100 rupees, in amount or value taken or received as aforesaid) as appears adequate to his offence*: provided also that the above rule is held applicable to any officer entrusted with the payment of advances to the molungees, who, under any pretence or color whatsoever, appropriates to his own use the whole or any part

* *For rule for commutation of fine, see para.* 2605.

thereof, or who takes or requires from any molungee, or other person employed or concerned in the manufacture of salt, a receipt or other written acknowledgment for a larger sum than has been actually paid to him. Reg. X. 1819, sect. 63.

Officers embezzling salt, or permitting it to be carried off without order, or granting false receipts, are to be punished as for theft.

2589. Any officer in charge of a salt golah or any ware-house or other place in which salt, the property of government, is stored, who embezzles any of the salt received into any such golah or place of deposit entrusted to his charge; or who knowingly permits any salt so received to be carried from such golah or place of deposit, without an order from the agent to whom he is subordinate; or who so permits to be carried from such golah or place aforesaid a greater quantity of salt than is specified in such order; or who knowingly grants a receipt for a larger quantity of salt than is received and stored by him; is to be held guilty of theft, and punished accordingly, on conviction before a competent criminal court. Reg. X. 1819, sect. 64.

And it is sufficient proof of embezzlement that the out-turn of the golah exhibits a deficiency for which they cannot account.

2590. But in modification of the above provision and in addition thereto, it is enacted that when there is no direct proof of the unauthorized removal of salt from any golah or place of government store, sufficient to convict the parties concerned therein of theft within the above provisions, the officer or officers, who have been entrusted with the charge of such golah or place of government store, are nevertheless liable for the offence of embezzling the salt of any store in their custody, the out-turn of which exhibits, according to the accounts kept of receipts and deliveries, a deficiency for which he or they may not duly account. And the officer in charge of any golah or salt store is in like manner to be deemed guilty of embezzlement, if he has made away with or does not produce the true account of such store: and any person, against whom the offence of embezzlement is established under this section, is liable, on conviction before the magistrate, to be punished by fine and imprisonment, under the general powers vested in the magistrates. Act XXIX. 1838, sect. 28.

Penalty for not producing the account.

Punishment for embezzlement.

Punishment of salt officers vexatiously and unnecessarily seizing goods, or arresting any person, or detaining any boat.

2591. If any officer of the salt department is convicted before the magistrate of having vexatiously and unnecessarily seized the goods of any person on the pretence of seizing or searching for salt; or of having vexatiously and unnecessarily arrested any person; or of having stopped and detained any boat unnecessarily and without authority; or of having detained any boat longer than is necessary for the purpose of search; every such officer is, besides dismissal, to be punished with imprisonment not exceeding 6 months, and with fine not exceeding 200 rupees, commutable if not paid to a further imprisonment not exceeding 6 months. Act XXIX. 1838, sect. 22.

Punishment for extortion.

2592. The provisions of sect. 38, Reg. IX. 1810, which declares native officers in the customs department subject for extortion to imprisonment, fine, and corporal punishment, are not applicable to native officers in the salt department. But though there is no corresponding enactment in Reg. X. 1819, the officers of the salt department are of course amenable to justice for acts of extortion under the general regulations. Const. No. 476.

Adulteration.

Certain kinds of adulterated salt to be confiscated and destroyed.

2593. Any common or alimentary salt, adulterated by an artificial admixture with the substance, called kharee noon, or mixed with phoolkharee noon, puckwa salt, or any description of impure and bitter salt, which is found in any golah, or shop, in any place

whatsoever, is to be confiscated and destroyed; and any salt merchant, or other person selling salt, wholesale or retail, who so adulterates it, or knowingly sells any salt so adulterated, is to pay a fine calculated at the rate of 10 rupees per maund of 82 sicca weight to the seer upon the quantity which is found so adulterated. Reg. X. 1819, sect. 77.

Penalty on persons adulterating it, or selling such,

2594. Salt adulterated in any of the modes above stated is to be seized by all officers empowered by this regulation to seize salt, who immediately on making any attachment, or seizure, are required to report the circumstance to the magistrate within whose jurisdiction the attachment has been made;—the magistrate, on receiving such report, is without delay to institute a summary inquiry into the circumstances of the case; and if it appears to him that the salt has been adulterated as aforesaid, and is in consequence liable to confiscation, he is to proceed to confiscate it accordingly, and to levy the prescribed fine, commutable if not paid to imprisonment in the dewanny jail for a period not exceeding 6 months. Reg. X. 1819, sect. 78.

to be adjudged by the magistrate on a summary inquiry, instituted on the report of the officer seizing such.

2595. In cases of attachment of salt alleged to be adulterated with kharee noon, or any other salt of the description above specified, the magistrate is without loss of time to ascertain the fact by reference either to the civil surgeon of the station for examination, or to a committee of respectable merchants or dealers in salt, or in any other mode that appears most likely to elicit the truth. Reg. X. 1819, sect. 79.

Magistrate in what manner to ascertain whether the salt is adulterated.

2596. Provided always that if the proprietor of such confiscated salt, being dissatisfied with the order of confiscation, immediately gives responsible security for the amount of the penalty, and further, within a period of one month, institutes a regular suit in the dewanny adawlut against the officer, who seized the salt, for damages,—in such case the magistrate is to suspend the execution of his order and to stay all further proceedings: but if, at the expiration of one month from the date of the order of confiscation, no suit has been instituted by the proprietor of the salt, the magistrate is without further delay to levy the penalty from his security, and otherwise to carry the order of confiscation into full effect. Reg. X. 1819, sect. 80.

Magistrate to stay proceedings, if the proprietor of the salt gives security for the fine, and institutes a suit in the civil court against the officer who seized the salt within one month.

2597. In all cases where any proprietor of salt confiscated for being adulterated with kharee noon, or any of the substances aforesaid, is unable to give the above security for the amount of the penalty, the magistrate, upon his being satisfied of the inability of the party to give security, is empowered to dispense with security; taking from the party bail for his appearance only to abide the issue of the suit; or, in the event of the suit not being instituted within the period prescribed by the preceding section, to answer in his own person the amount of the penalty; and in the meantime the magistrate is to keep the salt under attachment. Reg. X. 1819, sect. 81.

Magistrate may dispense with security, taking bail for his appearance.

2598. In the event of a regular suit being instituted for the purpose of setting aside the order of confiscation, the salt is to be held under attachment by the court until a final decision is passed in the cause. Reg. X. 1819, sect. 84.

Salt to be held under attachment pending suit.

2599. The rules contained in the six foregoing paragraphs, with regard to the adulteration of alimentary salt with kharee noon and other descriptions of impure and bitter salt, are equally applicable to all pungah salt, which is found within the provinces of

The above rules are applicable to pungah salt mixed with certain other kinds.

Bengal, Behar, and Orissa, mixed with balumba, salumba, or other salt not being salt sold on account of government, or imported by sea under the provisions of the customs laws (a); excepting that any person who sells, or in whose possession salt of this description is found, he knowing the same, is, besides the forfeiture of the salt, to pay to government the sum of 5 rupees for every maund of 82 sicca weight upon the quantity which is so mixed, instead of 10 rupees per maund as prescribed in sect. 77; provided further that salt of this description, which is confiscated, is not to be destroyed, but is to be disposed of in such place without the limits of the provinces of Bengal, Behar and Orissa, and in such manner as is directed by government. Reg. X. 1819, sects. 85 and 93.

but the fine is to be less;

and such salt is to be disposed of as government directs.

If seizure is made by native officers without information they are entitled to half the fine;

2600. When attachments or seizures of salt adulterated with kharee noon, or other salts of the nature described above, are made wholly by the native officers of government, and not upon any information furnished to them, they are entitled to receive one moiety of the fine, which is levied from the offender, agreeably to the rule prescribed above, and the other moiety is to be carried to the account of Government. Reg. X. 1819, sect. 94, cl. 1.

if with information to one-third, and the informer to one-third.

2601. If any other person or persons give information of salt being so adulterated to the native officers of government, and the salt is seized in consequence of such information, he or they are entitled to receive one-third of the fine which is levied as above prescribed, and the officer, who has made the seizure, is entitled to receive also one-third of the amount: the remaining third is to be carried to the account of government. Reg. X. 1819, sect. 94, cl. 2.

Proceeds of sale of boats, &c. to be divided in the same manner.

2602. The boats, carriages, &c., on which such adulterated salt is loaded, together with the horses, bullocks, and other cattle employed in its transportation, are to be forfeited and sold by public sale; and the proceeds of the sale are to be distributed in the manner above mentioned for the distribution of the fine levied from the offender. Reg. X. 1819, sect. 94, cl. 3.

Board of customs, salt and opium, may remit any portion of such fine and penalty.

2603. In all cases in which any salt is forfeited to government under the rules contained in this regulation, or in which any person has been subjected to the penalties prescribed in sect. 77, it is competent to the board of customs, salt and opium, on application from the party, to call for a report of the circumstances of the case from the salt agent or superintendent, by whom it was in the first instance investigated, and to remit any portion of the fine or penalty which has been imposed. Reg. X. 1819, sect. 117, cl. 1.

False information.

Punishment of persons wilfully and maliciously giving false information regarding salt in store.

2604. If any person wilfully and maliciously gives false information in respect to there being illicit salt in store in any house or ware-house, and so procures that such house or ware-house is searched to the injury or vexation of the owners thereof, or of any other person or persons whatsoever, such false informer is, on conviction of the offence before any magistrate, liable to imprisonment for two years, and to a fine not exceeding 500 rupees, at the discretion of any magistrate by whom the case is tried, and in case of the non-payment of the fine to imprisonment for a further period of 6 months. Act XXIX. 1838, sect. 23.

(a) Reg. XV. 1817 is mentioned in the text; but that has been repealed by Act XVI. 1837.

Fines and imprisonment.

Rule for commutation of the above fines to imprisonment.

2605. Whenever a penalty or fine is adjudged against any person under the provisions of this regulation, it is competent to the officer or authority adjudging the same, in case the amount is not discharged, to award a period of imprisonment in commutation according to the following scale, in addition to such imprisonment as such officer or authority is specially empowered to judge:

if the amount of the fine or penalty does not exceed 50 rupees,—the imprisonment to be awarded in commutation is not to be less than 15 days, and not more than one month:

if the amount of the fine or penalty exceeds 50, and is less than 100 rupees,—the imprisonment to be awarded in commutation is not to be less than one month, and not more than 2 months:

if the amount of the fine or penalty exceeds 100, and is not more than 500 rupees,—the imprisonment to be awarded in commutation is not to be less than 2 months, and not more than 4 months:

if the amount of the fine or penalty exceeds 500 rupees,—the imprisonment to be awarded in commutation is not to be less than 4 months, and not more than 6 months.

Reg. X. 1819, sect. 110.

Persons confined under these rules to be imprisoned in the civil jail; except when persons concerned in illicit manufacture, or native officers causing it to be manufactured on their own account, or molungees embezzling, are sentenced to imprisonment in addition to fine; or persons smuggling are sentenced to imprisonment in lieu of fine.

2606. All persons sentenced to imprisonment under the provisions of this regulation, and all persons confined for non-payment of the fines to which they are liable, are to be confined exclusively in the dewanny jail. Reg. X. 1819, sect. 121.

2607. But persons convicted of having been concerned in or having encouraged or promoted the illicit manufacture of salt,—or officers or servants employed in the salt department, or any other native officer of government, convicted of causing salt to be obtained from the manufacturers or other persons employed in the salt department otherwise than on account of government, or of having caused salt to be manufactured for their own benefit, or of having knowingly permitted such manufacture for the benefit of any other person,—or molungees, or others receiving advances for the manufacture of salt on account of government, convicted of embezzlement of the salt for the provision of which they received advances from government, or of otherwise illegally disposing of any salt manufactured by them,—and sentenced to imprisonment in addition to fine, are to undergo such punishment in the foujdaree jail. And so, persons convicted of smuggling salt without rowannah singly or in gang, and sentenced to pay a fine to government, are, if the fine is not paid, to be imprisoned in the foujdaree jail. And the warrant of the officer adjudicating any such case is authority for the magistrate, or other person in charge of the foujdaree jail, to hold the person described therein in confinement in such jail, as is specified and required in the said warrant. Act XXIX. 1838, sects. 16 and 15.

The warrant of officer adjudicating is authority for the magistrate to hold persons in confinement.

Salt lands.

Penalty for persons illicitly cultivating, clearing, or ploughing lands transferred to the salt department.

2608. No cultivation is to be allowed within the limits of any chur or other lands transferred to the salt department, unless with the permission of the board of customs, salt and opium, so long as the manufacture is continued on the same; and it is lawful for the salt agent and his subordinate officers to attach, confiscate, and dispose of, as is directed by the board, any crops grown on such land in contravention of this rule, and to require the

police to aid him in doing so. And any person illicitly cultivating, clearing, or ploughing such land, or doing any act preparatory to its cultivation and clearance, or causing another to do so, is, on conviction before a magistrate, subject for every such offence to a fine not exceeding 500 rupees, besides being liable in a civil action for any damages, which the salt department sustains. Provided, however, that if any chur or salt land occupied as above becomes through natural causes useless for the purposes of the salt department, the proprietor thereof is to be entitled to recover possession of the same, on establishing the fact to the satisfaction of the board of customs, salt and opium, or by a regular suit in court, and on relinquishing the compensation paid to him by the salt agent for the use of the land. Reg. I. 1824, sect. 12.

Such fines commutable to imprisonment.

* *v. paras.* 913 *and* 918.

2609. Fines imposed under the above rule are to be commuted to imprisonment under the provisions of sect. 3, Reg. XIV. 1797,* and sect. 19, Reg. IX. 1807, whenever the party, on whom the fine is imposed, neglects to pay it. Const. No. 388.

CHAPTER VI.

OF MILITARY STORES.

Arms and military stores not to be transported except under a pass.

2610. The transportation of cannon, and of all descriptions of fire-arms or military stores, excepting on account of or under a pass from the British government, being prohibited, all officers of the customs are required to seize all such cannon, arms, or military stores, as are attempted to be transported in disobedience of this prohibition. The cannon, arms, or stores so seized, are liable to confiscation. This rule, however, is not to be considered as applicable to fowling pieces, pistols, swords, or any other arms, which are in the possession of individuals evidently for private use. Reg. IX. 1810, sect. 31.

Arms, ammunition, and military stores not to be exported from Company's territories without a pass.

2611. Arms, ammunition, and military stores (with the exception of arms in the possession of individuals for private use) are not to be exported, or otherwise taken from the territories of the East India Company, without a license from a public officer or officers, to be indicated by the government for the purpose of granting such licenses, and a full compliance with all such rules and conditions as may be prescribed for the guidance of such officer or officers, in regard to such exports, by the government. And any arms, ammunition, or military stores, which any person exports, or attempts to export, or take as aforesaid, contrary to this Act, are to become thereby forfeited, on the award of the officer or officers authorized as aforesaid to grant licenses, or the collector of customs; and every person, offending in the premises contrary to this Act, is liable, on conviction before a magistrate, to a penalty not exceeding 500 rupees. Act XVIII. 1841, sect 1.

Penalty for offending against this prohibition.

Penalty for keeping more than 50 pounds of gunpowder without license.

2612. Any person, who collects or keeps in one place, or within places not exceeding 3 miles in distance from each other, any quantity of gunpowder exceeding 50 pounds, without a license from such officer as aforesaid, is liable, on conviction before a magistrate,

to a penalty not exceeding 500 rupees; and such gunpowder is to become forfeited on the award of the officer or officers authorized to grant licenses as aforesaid, or the collector of customs. Act XVIII. 1841, sect. 2.

Government may allow exportation of military stores.

2613. It is lawful for the government to allow at any port or ports the exportation of arms, ammunition, and military stores as aforesaid, without any such license as aforesaid, as they deem expedient. Act XVIII. 1841, sect. 3.

Chief magistrate of Calcutta to grant licenses for exportation of military stores.

2614. The chief magistrate of Calcutta is appointed, under the above provisions, to be the officer for the presidency of Fort William, for the purpose of granting licenses for the exportation of arms, ammunition, or military stores from Calcutta. It is not the intention of this appointment to preclude the collector of customs from allowing the exportation of arms, ammunition, or military stores, when accompanied by an order of government according to the practice heretofore in observance. Govt. *Bengal*, Notification, February 9, 1842.

CHAPTER VII.

OF PRINTING PRESSES.

Under what rules periodical works of news may be published.

2615. No printed periodical work whatever, containing public news or comments on public news, is to be published within the territories of the East India Company, except in conformity with the rules hereinafter laid down. The printer and publisher of every such periodical work are to appear before the magistrate of the jurisdiction, within which such work is to be published, and are to make and subscribe in duplicate the following declaration:—"I. A. B. declare that I am the printer (or publisher, or printer and publisher) of the periodical work entitled———, and printed (or published, or printed and published) at———:" and the last blank in this form of declaration is to be filled up with a true and precise account of the premises where the printing or publication is conducted. As often as the place of printing or publication is changed, a new declaration is necessary. As often as the printer or publisher, who has made such declaration, leaves the territories of the East India Company, a new declaration from a printer or publisher, resident within the said territories, is necessary. Act XI. 1835, sect. 2.

Form of declaration to be made by printer and publisher.

When new declaration is necessary.

Penalty for breach of the above rules.

2616. Whoever prints or publishes any such periodical work, as is hereinbefore described, without conforming to the rules hereinbefore laid down; or whoever prints or publishes, or causes to be printed or published, any such periodical work, knowing that the said rules have not been observed with respect to that work; is, on conviction, to be punished with fine to an amount not exceeding 5000 rupees, and imprisonment for a term not exceeding 2 years. Act XI. 1835, sect. 3.

The originals of such declaration where to be deposited.

2617. Each of the two originals of every declaration so made and subscribed, as is aforesaid, is to be authenticated by the signature and official seal of the magistrate before whom the said declaration has been made; and one of the said originals is to be deposited among the records of the office of the said magistrate, and the other original is to be deposited among the records of the supreme court of judicature, or other Queen's court, within the jurisdiction of which the said declaration has been made. And the officer in charge of each original is to allow any person to inspect that original on payment of a fee of one rupee; and is to give to any person applying a copy of the said declaration attested by the seal of the court, which has the custody of the original, on payment of a fee of 2 rupees. Act XI. 1835, sect. 4.

Such originals may be inspected, and copies taken.

Copy of such declaration to be sufficient proof of the identity of the printer or publisher.

2618. In any legal proceeding whatever, as well civil as criminal, the production of a copy of such a declaration as is aforesaid, attested by the seal of some court empowered by this act to have the custody of such declarations, is to be held (unless the contrary is proved) to be sufficient evidence, as against the person whose name is subscribed to such declaration, that the said person was printer, or publisher, or printer and publisher (according as the words of the said declaration may be), of every portion of every periodical work whereof the title corresponds with the title of the periodical work mentioned in the said declaration. Act XI. 1835, sect. 5.

How persons, who have signed such declaration, may relieve themselves of the responsibility by making certain declaration; which is to limit the period during which the former declaration is sufficient proof of the identity of the printer or publisher.

2619. Provided always that any person, who has subscribed any such declaration as is aforesaid, and who subsequently ceases to be the printer or publisher of the periodical work mentioned in such declaration, may appear before any magistrate and make and subscribe in duplicate the following declaration: "I, A. B. declare that I have ceased to be the printer (or publisher, or printer and publisher) of the periodical work entitled——." And each original of the latter declaration is to be authenticated by the signature and seal of the magistrate before whom the said latter declaration has been made; and one original of the said latter declaration is to be filed along with each original of the former declaration. And the officer in charge of each original of the latter declaration is to allow any person applying to inspect that original on payment of a fee of one rupee, and is to give to any person applying a copy of the said latter declaration attested by the seal of the court having custody of the original, on payment of a fee of 2 rupees. And in all trials in which a copy, attested as is aforesaid, of the former declaration has been put in evidence, it is lawful to put in evidence a copy, attested as is aforesaid, of the latter declaration: and the former declaration is not to be taken to be evidence that the declarant was, at any period subsequent to the date of the latter declaration, printer or publisher of the periodical work therein mentioned. Act XI. 1835, sect. 6.

Penalty for printing book not bearing legibly the name of the printer and publisher, and the place of printing and publication.

2620. Every book or paper printed within the territories of the East India Company, is to have printed legibly on it the name of the printer and of the publisher, and the place of printing and of publication: and whoever prints or publishes any book or paper otherwise than in conformity with this rule is, on conviction, to be punished by fine to an amount not exceeding 5000 rupees, and by imprisonment for a term not exceeding 2 years. Act XI. 1835, sect. 7.

2621. No person is, within the territories of the East India Company, to keep in his possession any press for the printing of books or papers, who has not made and subscribed the following declaration before the magistrate of the jurisdiction wherein such press is: "I, A. B. declare that I have a press for printing at ———:" and this last blank is to be filled up with a true and precise description of the premises where such press is. Whoever keeps in his possession any such press without making such a declaration is, on conviction, to be punished by fine to an amount not exceeding 5000 rupees, and by imprisonment for a term not exceeding 2 years Act XI. 1835, sect. 8.

Declaration to be made on establishment of press for the printing of books or papers.

Penalty for breach of this rule.

2622. Any person who, in making any declaration under the authority of this Act, knowingly affirms an untruth, is, on conviction thereof, to be punished by fine to an amount not exceeding 5000 rupees, and imprisonment for a term not exceeding 2 years. Act XI. 1835, sect. 9.

Punishment for affirming an untruth in any such declaration.

2623. It is imperative upon a magistrate, under the above provisions, to sentence any person convicted of a breach of them to imprisonment in addition to fine. If the fine is not paid, it is to be levied under Act II. 1839*, and is not commutable to a further period of imprisonment. Const. No. 1325.

In all such cases imprisonment must be adjudged in addition to fine.

* *v. para.* 919.

CHAPTER VIII.

OF LOTTERIES AND GAMBLING.

2624. In the territories subject to the government of the East India Company, all lotteries not authorized by government are to be deemed common and public nuisances, and against law. Act V. 1844, sect. 1.

Lotteries are illegal.

2625. No person is to keep in the said territories, publicly or privately, any office or place for the purpose of drawing any lottery not authorized by government, or to have any such lottery drawn, or knowingly to suffer any such lottery to be drawn in his or her house; and any person so offending is, for every such offence, upon conviction before a justice of the peace or magistrate, to be punished by fine not exceeding 5000 rupees. Act V. 1844, sect. 2.

Penalty for keeping an office for drawing of lotteries, or for allowing such to be drawn in the house.

2626. No person is, under any pretence, device, or description whatsoever, to agree to pay any sum, or to deliver any goods, or to do or forbear doing any thing for the benefit of any person, whether with or without consideration, on any event or contingency relative or applicable to the drawing of any ticket, lot, number, or figure in any such lottery; or to publish any proposal for any of the purposes aforesaid; and any person, offending in any of the matters mentioned in this section, is for every such offence, upon conviction before a justice of the peace or magistrate, to be punished by fine not exceeding 1000 rupees. Act V. 1844, sect. 3.

Penalty for taking part in any lottery, or publishing any proposal for such purposes.

Disposal of such fines.

2627. Every fine, which is incurred under the provisions of this Act, is to be applied, one half to the use of government, and the other half to the use of the informer or informers. Act V. 1844, sect. 4.

Gambling how far cognizable by magistrate.

2628. There is no specific enactment in the regulations by which persons found playing in gambling houses are punishable by the magistrate. He should therefore, in any case of doubt, take a futwa from the law officer, and proceed in conformity with his exposition of the Mahomedan law.(a) Const. No. 891.

(a) It is said in the chapter of the Hedaya "Of Kiraheeat or abominations," that "it is abominable (makrooh) to play at chess, dice, or any other game; for if any thing be staked it is gambling, which is expressly prohibited in the koran; or if, on the other hand, nothing be hazarded, it is useless and vain. Besides, the prophet has declared all the entertainments of a Mussulman to be vain excepting three; the breaking in of his horse; the drawing of his bow; and the playing and amusing himself with his wives. Several of the learned, however, deem the game of chess to be allowed, as having a tendency to quicken the understanding; which opinion has also been ascribed to Shafei, and Mâlik." The word "makrooh" here used is taken to apply to anything, "which in its qualities nearly approaches to unlawful, without being actually so." But it is also said in the chapter "Of evidence" that "the testimony of a person who plays for a stake at dice or chess is inadmissible, because the gaming in that manner is ranked in the number of great crimes." The prohibition of gaming is deduced from the saying of the prophet, "whoever plays at chess or dice does, as it were, plunge his hand into the blood of a hog." *Hed. Trans. vol.* 2, *page* 688; *and vol.* 4, *page* 122.

BOOK V.

OF OFFENCES AGAINST THE PERSON, OR THE PUBLIC PEACE.

CHAPTER I.

OF PERSONS OF BAD CHARACTER.

SECTION I.

OF NOTORIOUS OFFENDERS.

Police officers to apprehend all notorious robbers, and receivers.

2629. It is the duty of the darogahs of police to apprehend and forward to the magistrate all persons residing within their respective jurisdictions, who are notorious as dacoits and robbers of any denomination, or as housebreakers, thieves, or receivers of stolen property. Reg. XX. 1817, sect. 20, cl. 1.

On receiving credible information of any such person, the darogah is to make a secret and summary inquiry; and if necessary to apprehend him;

2630. On any written charge being preferred to a police darogah against individuals within his jurisdiction, of their being notorious robbers, burglars, thieves, or receivers of stolen property; or on the darogah's receiving credible information of such persons being within his jurisdiction; the darogah, or other police officer presiding in the thana jurisdiction, is, previously to the apprehension of the accused, to make such secret and summary inquiry in the neighbourhood as is practicable, without endangering his escape, in regard to his general character and means of subsistence; and if there appear substantial grounds to believe that the charge or information is well founded, the darogah or other police officer is to apprehend the person suspected, and is to examine him without oath regarding his name, connections, place of residence, occupation, and means of livelihood. If on such examination, and any further immediate enquiry which is practicable, there appear to be strong grounds of presumption, that the charge or information against the prisoner is unfounded or greatly exaggerated, and the prisoner tends sufficient bail for his appearance before the magistrate, such bail is to be accepted; or in failure thereof, as well as in all cases wherein the examination of the prisoner tends to confirm the truth of the charge or information against him, he is to be forwarded under custody to the magistrate, together with a written report of the enquiry, including such particulars as are necessary to enable the magistrate to form a just comprehension of the merits of the case. Reg. XX. 1817, sect. 20, cl. 2.

and, as he accounts for himself, to discharge him on bail or to forward him to the magistrate;

but the police officers cannot hold sooruthals in such cases.

2631. The foregoing rule is not to be construed as authorizing the police officers to make the sooruthals and enquiries regarding character provided for in the next clause, except under the special orders of the magistrate. Reg. XX. sect. 20, cl. 3.

Magistrate to order enquiry without delay and to admit prisoner to bail.

2632. Whenever persons are apprehended on suspicion of bad livelihood, or information of notorious character only, the magistrate is, with the least possible delay, to make such enquiry as appears necessary to ascertain the grounds and truth of such suspicion or information; and if the party suspected, or informed against, is able to give sufficient bail for his appearance during the magistrate's enquiry, he is to be admitted to bail accordingly. C. O. No. 81 of vol. 1.

Police officers how to proceed when ordered to make local enquiry.

2633. Whenever a police officer receives instructions from a magistrate to make a local inquiry and sooruthal, for the purpose of ascertaining the character of any person of bad fame or suspicious livelihood, the darogah is to proceed himself, or is to depute the mohurrir or jemadar of the thana to the village, in which the suspected person has been known to reside; and the darogah, mohurrir, or jemadar, when not otherwise specially instructed by the magistrate, is to summon four or more of the principal inhabitants (not being females) or of the middling classes residing in the village, and is to question them without oath respecting the present and former place of residence of the prisoner, his general character, means of subsistence, property in ploughs, land, cattle, and other goods and chattels; he is also to require them to state whether the individual suspected associates with persons of bad character, robbers, or armed men; and, if so, the names of such persons; whether he is frequently absent from his house or place of residence at night, without sufficient cause; whether his expenses are in proportion to or exceed his means; whether any person in the village bears the prisoner enmity; and whether the prisoner was ever before apprehended; and, if so, on what account. Reg. XX. 1817, sect. 20, cl. 4.

The sooruthal if favorable is alone to be forwarded; if unfavorable, witnesses are to be bound over to appear.

2634. The sooruthal, containing the result of the enquiry above directed, is to be signed by the persons assembled; and if the result of the enquiry is favorable to the character of the prisoner, the darogah is only to forward his report, and to await the orders of the magistrate; but, if unfavorable, a sufficient number of the subscribing witnesses, not in any case exceeding four unless under the special orders of the magistrate, are to be immediately required to execute recognizances to appear and give evidence in the foujdaree court. Reg. XX. 1817, sect. 20, cl. 5.

Persons of bad character, liberated from custody or discharged from jail, are to be released in the presence of the headmen and watchmen of the village, who are to be enjoined under a penalty to keep a vigilant inspection over their conduct and mode of living.

2635. Whenever a person of bad character is liberated from custody, or is released from jail after the expiration of a specific sentence of imprisonment, and the magistrate is of opinion, with reference to the character of the prisoner, that his future conduct should be watched, such individual is to be sent to the thana division, in which his habitation is situated, and is to be released by the officers of the police in the presence of the munduls, putwarries, and other headmen and watchmen of the village to which the person liberated belongs, who are to be enjoined to afford him all practicable aid in procuring an honest livelihood; but at the same time to keep a vigilant inspection over his conduct and mode of living; and to give timely information to the police officer of the jurisdiction, in the event of his being absent from his village at night without giving notice of his intention; or of his associating with individuals of bad reputation; or of his ceasing to labor or to

obtain a livelihood by creditable means; in all which cases they are to be held responsible, and liable to the penalty stated in the next clause, unless they give due information of the circumstances to the thana. Reg. XX. 1817, sect. 20, cl. 6.

Names of the headmen before whom they are released to be reported to magistrate.

2636. On the occasion of releasing a prisoner, under the provisions of the foregoing rules, the police darogah is to report to the magistrate the names of the munduls and other headmen of the village present at the time of the prisoner's discharge; and if the person released be hereafter convicted of any criminal offence, and it be established that the headmen of the place neglected to furnish the information required by the preceding clause, they are to be liable to the payment of a fine not exceeding 100 rupees from each individual, commutable in default of payment to one month's confinement in the civil jail. Reg. XX. 1817, sect. 20, cl. 7.

Specification of penalty for not giving required information.

Persons suspected of being engaged in a combination for robbery and murder to be made over to thuggee officers.

2637. Persons accused of robbery and murder, or of either of those crimes, under circumstances justifying a suspicion that the crimes have been perpetrated by persons engaged in a systematic combination for such purposes, are to be made over for trial to the officers of the thuggee department. C. O. No. 92 of vol. 3.

SECTION II.

OF SECURITY FOR GOOD BEHAVIOUR.

Magistrate to confine in default of security for one year.

2638. Whenever the magistrates, under the authority vested in them by the existing regulations, require security for the good behaviour of a prisoner, they are (in all cases in which they judge it safe to do so) to provide in their order for the release of the prisoner at the end of a definite period not exceeding 12 months. Reg. VIII. 1818, sect. 8, cl. 1.

Sureties to be responsible for same period.

2639. The period to be fixed for the responsibility of the sureties, in such cases, is to correspond with the term limited by the magistrate's order for the prisoner's detention in the event of his not furnishing the required security. Reg. IV. 1825, sect. 5.

Session judge need not revise such cases except on appeal:

2640. It is not necessary for the session judge to revise the proceedings of the magistrate in such cases, except on petitions [of appeal] presented by the prisoners; when he is directed and empowered to call for the proceedings, and on his own authority to annul, modify, or confirm, the orders of the magistrate.(a) Reg. VIII. 1818, sect. 8, cl. 2.

and cannot enhance the sentence:

2641. When a case is brought before a judge by petition from a security prisoner, there is no discretion to enhance the period of detention. Const. No. 347.

(a) It is to be remembered that Act XXXI. 1841 has repealed those parts of the Bengal code, which concern the powers and duties of the criminal courts in respect to appeals and revision of sentences of a lower court by a higher. The existing rules, therefore, regarding appeals and revision of sentences apply to cases of this nature; and consequently a prisoner, required to give security for good behaviour, must present his petition of appeal within one month from the date of the magistrate's order.

he may always examine proceedings; but cannot revise except on appeal.

2642. The above provision is not to be construed into a prohibition to the judge to call for the proceedings, when no petition is presented to him: but he cannot revise such cases, except on appeal by the parties. Const. No. 460. C. O. No. 113 of vol. 3. See also paras: 1293, 1319, and 1321.

If magistrate thinks that the prisoner ought not to be released at the end of one year, he is to specify the amount of security, the number of sureties, and the period of their responsibility, required;

2643. In all other cases, in which the magistrate is of opinion, from the evidence to general character adduced before him, that the prisoner is by habit a robber, burglar, or thief, or a vender or receiver of stolen property, knowing the same to have been stolen, of a character so desperate, dangerous, or irreclaimable, as to render his release without security, at the expiration of the limited period of 12 months above specified, hazardous to the community, the magistrate is to record his opinion to that effect with an order specifying the amount of security which should, in his judgment, be required from the prisoner, as well as the number of sureties, and the period for which the sureties should be responsible for the prisoner's good behaviour. Reg. VIII. 1818, sect. 9, cl. 1.

and to lay the proceedings before the session judge, who is to confirm or modify such order.

2644. The whole of the proceedings are then to be laid before the session judge, who after examining them, and requiring any further evidence, which he judges necessary, is competent, from his own authority, to pass orders on the case, either confirming, modifying, or annulling the orders of the magistrate, as he judges proper and equitable. Reg. VIII. 1818, sect. 9, cl. 2.

The above applies whenever magistrate requires security for more than one year.

2645. Under the above provision the proceedings in all cases of prisoners in confinement under requisition of security by a magistrate for their good behaviour, for any period exceeding 12 months, must be laid before the session judge. Const. No. 517.

Judge to fix period of detention, in default of security, not exceeding 3 years.

2646. In all such cases, if the session judge does not think it safe to direct the immediate discharge of the prisoner, he is to fix a limited period for the provisional detention of the prisoner, in the event of his not giving the security required from him; which period is never to exceed 3 years, except in the cases specified in the following section. Reg. VIII. 1818, sect. 9, cl. 3.

Session judge may order a prisoner to be confined indefinitely in default of security;

2647. In cases in which the session judge,(a) from the proceedings before him, considers the prisoner to be a notorious gang-robber (dacoit), or other notorious robber of whatever denomination, being of desperate or dangerous character, whom it would be unsafe to set at liberty without substantial security for his future good behaviour, and who, therefore, in default of giving such security, should be confined indefinitely, in pursuance of sect. 9, Reg. VIII. 1808 [*i. e.* until the required security is given to the satisfaction of the sessions court, upon the report of the magistrate, unless from the prisoner's behaviour during his confinement, or other circumstance, there appears to be sufficient ground of assurance to warrant his discharge on a mochulka under the provision made for that purpose by sect. 11, Reg. LIII. 1803], he is to declare and order the same accordingly. Reg. VIII. 1818, sect. 10, cl. 1. Reg. III. 1819, sect. 2.

but such cases are always to be revised

2648. In these cases, however, the session judge is nevertheless to fix the amount of the security to be required from the prisoner, and is to provide in his order that, if the

(a) The original text vests these powers in the judge of circuit. Constructions Nos. 771 and 823 declare that the session judge is equally competent to exercise them.

prisoner is not able to furnish the security required within the period of 3 years from the date of such order, the prisoner in question is to be again brought up, on the expiration of the period of 3 years above specified, before the session judge; whose duty it will be, after examining the proceedings and making any further enquiries he may judge necessary, to determine whether the prisoner shall then be released, or whether he shall be again remanded, either on the same terms as before, or on any modified terms favorable to the prisoner. Reg. VIII. 1818, sect. 10, cl. 2.

by the session judge at the end of 3 years.

2649. With a view to encourage respectable individuals to become sureties for prisoners of the description alluded to in the foregoing clauses of this section, the period for which the sureties are to be responsible for the good behaviour of the individuals is, in all cases, to be limited to 3 years, subject however to the condition that the sureties, at the expiration of that period, are to be bound to deliver up the individuals to the magistrate. Reg. VIII. 1818, sect. 10, cl. 3.

In such cases the period of responsibility of sureties is to be confined to 3 years; but they are to deliver up the individual at the end of that period;

2650. When individuals are surrendered by their sureties under the foregoing rule, the magistrate is to ascertain whether the former surety is willing again to become responsible for the future good behaviour of the prisoner, for a further period not exceeding 3 years; and in the event of the surety being willing to become again responsible for the conduct of the prisoner, the magistrate is to accept the security, and to release the prisoner on the same terms as before. Reg. VIII. 1818, sect. 10, cl. 4.

and then, if they are willing, to renew their responsibility:

2651. If the former surety declines to become again responsible for the prisoner, and the prisoner is unable to furnish any other sufficient security, the magistrate is to detain him in custody, and to cause him to be brought before the session judge for such further orders as he considers it proper to pass in the case. Reg. VIII. 1818, sect. 10, cl. 5.

if unwilling, the individual is to be brought before the session judge.

2652. The criminal courts are prohibited from requiring security for good behaviour from persons charged with, but not convicted of, a specific offence, on the grounds of strong suspicion of their having committed such offence, independently of any proof of notorious bad character. Reg. VIII. 1818, sect. 2, cl. 1.

No person is to be required to give security solely on suspicion of having committed a particular offence.

2653. The foregoing rule is not to be construed to prevent the session judges, or the nizamut adawlut, from requiring security from prisoners, who are acquitted on the trial before those courts of the specific charge brought against them, provided such prisoners appear, from the evidence on the proceedings, to be of notoriously bad or dangerous character. In cases of this description, the session judges, or the nizamut adawlut, are to issue such orders as they judge necessary under the rules contained in sections 9 and 10 of this regulation. Reg. VIII. 1818, sect. 2, cl. 2.

But it may be required from an acquitted prisoner, if he is proved to be notoriously bad character.

2654. The session judge is competent to direct an investigation to be made into the character of a prisoner, acquitted of the specific charge, on which he has been tried, as a preliminary to the call for security. Const. No. 1180.

Session judge may originate investigation into character.

2655. It is not competent to a magistrate, or to a court of sessions, to add a demand of security to a specific sentence passed on a prisoner by themselves; nor can the session judge require security from a prisoner, to whom a specific punishment has been adjudged on a regular trial by a magistrate. C. O. No. 250 of vol. 1. Const. No. 1195.

Security cannot be required in addition to a specific sentence of punishment.

Magistrate how to proceed if he wishes to detain on security persons acquitted at the sessions.

2656. Whenever a magistrate or joint magistrate sees grounds for detaining in confinement, under requisition of security for good behaviour, a prisoner acquitted and ordered to be discharged by a court of sessions, he is required immediately to certify the same, together with a copy of his proceedings, for the information of the session judge. C. O. No. 201 of vol. 1.

Security is not to be required without proof of recent bad livelihood.

2657. The confinement of an individual in jail, on a requisition of security for good conduct, without proof of recent circumstances warranting the imputation of dishonest livelihood at the time of apprehension, is a manifest act of injustice. The session judge is particularly required to report any deviation from these orders. C. O. Nos. 9 and 26 of vol. 2.

What particulars are to be fixed in the order requiring security.

2658. In every instance, in which security for good behaviour is required, whether by the magistrates, the courts of sessions, or the nizamut adawlut, the amount of the security, the number of sureties (to be fixed at the discretion of the magistrate or of the court requiring the security), and the period of time for which the sureties are to be responsible for the good conduct of the prisoner, are to be fixed and determined. Reg. VIII. 1818, sect. 3.

Period of detention in default of security to be specifically fixed.

2659. The period of time, during which such prisoners may be made liable to detention in custody, on failure to furnish the security required from them, is to be specifically fixed in every instance, except in those cases, in which the prisoner appears to be a notorious robber, of a character so dangerous as to render his release, without security, evidently unsafe and objectionable. Reg. VIII. 1818, sect. 4.

Magistrate to use caution and discretion in requiring security.

2660. Adverting to the large number of persons detained by a magistrate merely on suspicion of being bad characters, without any direct evidence to the fact, and in some cases merely because they had been before apprehended or convicted of specific offences, the nizamut adawlut required magistrates to exercise the powers vested in them by the above provisions with due caution and discretion. C. O. No. 245 of vol. 1.

Rule for fixing amount of security: sureties to be responsible persons.

2661. Magistrates are to limit their requisitions of security for good behaviour to such sums, as it may appear equitable to recover in the event of the conditions of the engagement not being performed; and they are to be careful in ascertaining, that the sureties accepted are sufficiently responsible to make good the amount eventually demandable from them. C. O. No. 70 of vol. 1.

Surety not to be rejected on account of distant residence.

2662. Distance, or residence in another district, forms no ground for the rejection of the security of a person tendered by a prisoner under orders to give security for good conduct. Const. No. 920.

Penalty to be enforced whenever the conditions of the security bond are not fulfilled.

2663. To put a stop to the practice of persons, for a pecuniary consideration, making themselves answerable for the conduct of men of bad character, over whom they have no influence, in the expectation that whatever may be the future conduct of those for whom they are responsible, their security will be regarded as nominal and not put into execution, —it is directed that whenever a person, who has given security for his good behaviour, is convicted of a serious criminal offence, and has not been delivered up by his surety, the latter is to be called upon to show cause why the penalty, to which he is liable by his engagement, should not be enforced; and that unless satisfactory reason is assigned against

enforcing the security bond, in whole or in part, it is to be enforced by the magistrate, according to the same rules, and by the same process, observed by the civil courts in enforcing payment of money adjudged to be due by a decree. Magistrates are to make known the above rule to all persons, who offer themselves as sureties for the conduct and appearance of men of suspicious character in their respective jurisdictions. C. O. No. 70 of vol. 1. Const. No. 734.

Mode of enforcement.

2664. Individuals, who become sureties for the good behaviour of prisoners, may at all times obtain a discharge from their future responsibility by delivering up, or causing to be delivered up, the persons for whom they have become responsible to the proper magistrate or police officer: and they are not to be made responsible for the amount of the security-bond, in cases in which they give timely information to the magistrate, that the individuals, for whom they have become sureties, have taken to bad courses, and use every exertion in their power to the satisfaction of the magistrate for the apprehension and surrender of such individuals. Reg. VIII. 1818, sect. 7.

Sureties how to obtain release from responsibility. Penalty not to be enforced if they give timely information.

2665. In cases wherein it is necessary to enforce a penalty-bond entered into by a surety for good behaviour, and it appears that the surety is dead, the magistrate, in enforcing the engagement as directed above, is to proceed against the heirs and executors of the surety to the extent of any property belonging to the deceased, which has come to their hands. Under this rule, the magistrate should be careful that the penal engagement, entered into by a surety, specifies the responsibility, to which his heirs and executors are liable in the event of his demise. But in all cases when the surety dies, his representative has the option of obtaining a discharge by delivering up the party engaged for, as provided above with respect to the surety himself. In carrying the above instructions into effect, when he does not receive any special orders from the session judge or the nizamut adawlut, the magistrate is authorized to exercise his discretion in not enforcing the penalty, either wholly or partially, when the circumstances of the case appear to call for indulgence, or any equitable reason exists for dispensing with the penalty. C. O. No. 74 of vol. 1.

If surety dies, how far his heirs and executors are responsible.

Security-bond to be prepared accordingly.

How the heirs may obtain release from responsibility.

In such cases magistrate may remit the penalty in whole or in part.

2666. The magistrates are empowered, at all times, to exercise their discretion in releasing, without reference to any other authority, prisoners confined under requisition of security for their good behaviour, whether by their own orders, or by those of any other person discharging the functions of a magistrate; provided the magistrates are of opinion, from whatever cause, that such prisoners can be released without hazard to the community. Reg. VIII. 1818, sect. 5, cl. 1.

Magistrate may release persons confined by magistrate in default of security;

2667. In cases in which a magistrate is of opinion, for whatever reason, that any prisoner confined under requisition of security for good behaviour, by order of the sessions court or nizamut adawlut, can be safely released without such security, the magistrate is to make an immediate report of the case, with his sentiments, for the orders of the court, which has required the prisoner to furnish security previously to his release. Reg. VIII. 1818, sect. 5, cl. 2.

but he is to report the case, if security has been required by a higher court.

2668. In all cases of such reports being made by the magistrate to the sessions court, the judge is to call the prisoner before him, and to examine the proceedings held upon his

Judge how to proceed on receiving such report.

trial, as far as is necessary to ascertain the grounds on which the prisoner was required to find security; after which, and duly considering the circumstances stated in the magistrate's report, if he concurs with the latter in opinion that the prisoner ought to be released on his mochulka without security, he is to direct the same accordingly. Reg. LIII. 1803, sect. 11, cl. 2.

Circumstances to be considered by magistrate and judge in the exercise of such discretion.

2669. In the exercise of this discretion, the magistrates and session judges are of course to give due consideration to the general character of the prisoner as far as ascertainable, and the consequent risk to be apprehended from his being released without security for his future good conduct. Reg. LIII. 1803, sect. 11, cl. 3.

Mode of report to be made by magistrate in such cases.

2670. In making such reports the magistrate is to specify —

1*st*, the name and designation of the prisoner;
2*dly*, the sessions at which he was brought to trial;
3*rdly*, his number in the calendar;
4*thly*, the crime with which he was charged;
5*thly*, the date of the warrant or order requiring him to give security;
6*thly*, the ground on which the magistrate proposes his discharge without security on the execution of a mochulka.

C. O. No. 100 of vol. 1.

Assistant, vested with special powers, is not competent to require security for good behaviour.

2671. An assistant, vested with the special powers described in sect. 2, Reg. III. 1821, is not competent to require security for good behaviour from a prisoner sent in by a darogah under sect. 20, Reg. XX. 1817, or to commence an enquiry into the character of a prisoner made over to him for trial on a specific charge. Should he, in any trial referred to him by the magistrate, conceive it advisable to require security from a prisoner, not convicted of the crime charged, he must report to the magistrate to that effect. Const. No. 548.

SECTION III.

OF VAGRANTS AND SUSPECTED PERSONS.

Police darogahs to apprehend vagrants and suspicious persons.

2672. It is the duty of the darogahs of police to apprehend all vagrants and suspicious persons, of whatever denomination, wandering about the country in parties, or lurking about individually, without any fixed place of abode; or who, though resident in a particular place, have no ostensible means of honest livelihood, and who, on examination, are unable to give a satisfactory account of themselves. Reg. XX. 1817, sect. 20, cl. 8.

Police officers how to proceed on receiving information of the resort of such persons.

2673. Police darogahs, receiving information of the resort of such persons, are, previous to their apprehension, to make such summary inquiry as the nature of the case admits without risk to their escape; and, in the event of strong suspicion attaching to them, are to secure their persons; and, unless on examination without oath respecting

their names, connexions, place of residence, occupation, and means of livelihood, they can render a satisfactory account of themselves, are to forward them forthwith to the magistrate, together with a report of the circumstances, under which they have been arrested, and of the inquiry made. Reg. XX. 1817, sect. 20, cl. 9.

How to act if their names are unknown; or if they are in sufficient force to resist the police

2674. In cases where the names of the vagrants or other suspicious persons cannot be ascertained, it is competent to the police darogah to apprehend such persons without a specific warrant; and in the event of any number of persons of this description being in sufficient force to resist the officers of the thana, the darogah is to require the aid of the local zumeendar, or other landholder or farmer, or of the police officers of the adjacent thana, or is to apply for assistance from the sudder station, according to the exigency of the case. Reg. XX. 1817, sect. 20, cl. 10.

Darogah may admit such persons to bail.

2675. After the apprehension and examination of the persons suspected, should the information, upon which the darogah acted, prove to be incorrect, and no sufficient reason appear for sending them to the magistrate, the darogah is to admit the parties to bail, if they are able to furnish sufficient security; and is to report the circumstances to the magistrate, without sending them to the sudder station, till the receipt of an order to that effect. Reg. XX. 1817, sect. 20, cl. 11.

What order the magistrate is to pass in such cases.

2676. The magistrate is to examine on oath such vagrants or suspected persons, and also any persons who have a knowledge of their usual place of residence, occupation, or mode of obtaining their livelihood; and if there appears to him ground for supposing that they are disorderly or ill-disposed people, he is to employ them in repairing the public roads, or upon any other public work, until they find a security for their good behaviour in case of their being discharged; or until some creditable persons agree to entertain them in their service; or the magistrate is satisfied from their deportment whilst in his custody, or other circumstances, that they will, of themselves, take to some service or employment so as to obtain an honest livelihood; in either of which cases he is to discharge them. If any person so apprehended makes his escape from the custody of the magistrate before he is regularly discharged, and is re-apprehended, he is to be imprisoned and kept to hard labor for 6 months. *Beng.* Reg. XXII. 1793, sect. 10. *Ben.* Reg. XVII. 1795, sect. 10. *Ced. Prov.* Reg. XXXV. 1803, sect. 10.

Punishment of such persons escaping from jail.

Banishment of vagrants from the city or district is illegal; but they may be released on their voluntary offer to quit the jurisdiction.

2677. The practice of sentencing vagrants, and persons convicted of specific sentences, to banishment from the city or district, in which they were apprehended, and even to expulsion from the British territories, is wholly unwarranted by the regulations in force. This is not meant to prohibit the discharge from custody of a vagrant, or other person, not being a fixed inhabitant of a particular city or district, who has been apprehended under any circumstances of suspicion, and is not able to find security for his good behaviour, on his voluntary offer or consent to quit the jurisdiction, in which he was taken into custody. Such a measure, however, should, for obvious reasons, be adopted with circumspection, lest persons of bad character, released without security in one zillah, are left at liberty to commit acts of criminality in another jurisdiction. C. O. No. 159 of vol. 1.

Rules for preventing the subjects of foreign states from assembling in the British territories to commit robberies.

2678. Whereas persons being the subjects of foreign states, and assuming the fictitious characters of rajahs or of natives of distinction, or of pilgrims,(a) have frequently entered into the British territories, or have assembled together in armed bodies, for the purpose of committing robberies or other crimes within those territories, the following rules have been enacted with a view to prevent the recurrence of those practices. Reg. III. 1821, sect. 7, cl. 1.

Darogahs may detain such persons, and report or forward them to the magistrate.

2679. In addition to the powers vested in darogahs of police, by sect. 20, Reg. XX. 1817, with regard to the apprehension of all vagrants and suspicious persons, they are empowered to detain all persons travelling in bodies through their jurisdictions, or assembling therein under circumstances leading to the suspicion that they have assumed a fictitious character, and that they are in reality persons of the description mentioned in the preceding clause(b); and unless, on examination, they are able to give a satisfactory account of themselves, the darogahs are, without delay, either to report to the magistrate the circumstances under which they have been detained, or in cases of an emergent nature are to forward such individuals to the magistrate. Reg III. 1821, sect. 7, cl. 2.

Darogah how to proceed, if he does not think it necessary to detain them, or to forward them to the magistrate.

2680. If a darogah of police, acting under the discretion vested in him by the preceding clause, does not see sufficient cause, after the examination of the persons suspected, to send them to the magistrate, or to detain them until the orders of the magistrate are received, but nevertheless entertains suspicions of their real character and intentions, he is to depute one or more police officers to watch their proceedings in passing through his jurisdiction, and is to notify the same to the adjoining police division in order that the same precautions may be adopted and followed up. Reg. III. 1812, sect. 7, cl. 3.

Magistrate how to proceed, if the darogah forwards such persons to him.

2681. If a darogah of police forwards to the magistrate any persons travelling through, or assembling in his division under suspicious circumstances, the magistrate, having duly enquired into the grounds of their arrest, is either to release them; or to adopt the precautionary measures directed in the preceding clause; or, if they appear to be travelling without any reasonable object, and to be inhabitants of a remote district, or subjects of a foreign state, he is to compel them to return, under a suitable guard, from station to station, to the district or territory from which they appear to have proceeded. Reg. III. 1821, sect. 7, cl. 4.

Darogahs are not to confound with such persons strangers coming for the pur-

2682. In enforcing the provisions, contained in the preceding rules, the darogah and other officers of police, and the village watchmen, are to be careful not to confound strangers coming from the adjacent districts or countries for the evident purpose of culti-

(a) It would appear that the immediate cause of the enactment of these provisions was the incursion of a gang of shugalkhors, composed of 163 persons, disguised as ordinary attendants of their principal chief Mihirban, who passed through the country under the assumed character of a rajah on pilgrimage, and, after a march of four months, and at a distance of many hundred miles from their home in the northern part of Oude, effected a most atrocious robbery upon a boat laded with treasure, and carried off 20,000 dollars and 2600 rupees. Their trial is reported in N. A. R. vol. 2, page 125. See extract judicial letter from the Court of Directors to the Bengal Government, dated April 11, 1826, in "Selection of papers from the records at the East India House", vol. 4, page 15.

(b) The principal persons residing in villages, and village guards of every description, are required to give information of the resort to, or passage through, or assembling within, their villages of such persons under certain penalties. See para. 1860.

vating land, or exercising their several professions, with vagrants or other suspected persons. On the contrary, the darogahs are to afford all due and reasonable encouragement to persons coming of their own accord into their respective limits, who are desirous of settling therein from such industrious motives: the police officers are nevertheless to keep a watchful eye over such persons so long as it appears necessary; and the darogahs are invariably to report to the magistrate every instance, that comes to their knowledge, of an accession of this nature to the population of their respective divisions. Reg. XX. 1817, sect. 20, cl. 12.

pose of cultivating land or exercising their professions;

but such cases are to be reported to the magistrate.

SECTION IV.

OF IMMIGRANTS CREATING DISTURBANCES IN THEIR PARENT COUNTRIES.

2683. Whenever the governor general in council, upon due investigation, is satisfied that the emigrants from any state,(a) who have sought an asylum in the British territories, or the descendants of any such emigrants, have abused the protection afforded to them by attempts to excite disturbances in the state from which they or their ancestors have emigrated, it is competent to the governor general in council to order the removal of those persons to such other part or parts of the country, as is judged most convenient for their future residence. In like manner it is competent to the governor general in council to order such removal, whenever he has grounds to be satisfied that the residence of any body of aliens, or their descendants, in the vicinity of the frontier of the country from which they or their ancestors have emigrated, is likely to cause any serious misunderstanding between that state and the British government. Reg. XI. 1812, sect. 2.

Government may order removal of immigrants creating disturbances in the countries from which they have emigrated.

2684. Whenever any body of emigrants, or any individuals belonging to such body, are ordered to be removed from the part of the country, in which they have been established, they are to be allowed to dispose of any property, which they have acquired, in

Rules for the disposal of the property of such persons ordered to be removed.

(a) The preamble, which sufficiently explains the reasons for the enactment of these provisions, is as follows: "Whereas considerable bodies of persons, being natives of Arracan, and ordinarily denominated Mugs, have from time to time emigrated from that country, and established themselves in that part of the district of Chittagong, which lies contiguous to the Arracan frontier; and whereas numbers of those persons, or of their descendants, abusing the protection which had been afforded to them in the British territories, have excited disturbances and even levied war in the country of Arracan against the government of Ava, of which state Arracan is now a dependancy, and have conducted themselves in a manner manifestly tending to disturb the relations of amity, which subsist between the British government and the government of Ava; and whereas it is in consequence necessary that the governor general in council should possess legal powers to remove the said bodies of emigrants and their descendants from the frontier of the territory of Arracan, or any other bodies of aliens or their descendants from the vicinity of the country, from which they may have emigrated, and likewise to detain in confinement any of those persons, or any other individuals being natives of foreign countries or their descendants, for offences of the above nature actually committed by them in the territories of the state from which they may have emigrated; and whereas it is necessary to make provision for the trial of persons committing or aiding in the commission of the said offences; &c."

such manner as they judge proper; provided however, that if nevertheless they retain the right to any real property at the period of their actual removal, it is competent to the governor general in council to order such property to be sold by public auction under the superintendence of the collector of the district. In that case the nett proceeds of the sale are to be duly paid to the person or persons to whom the said property belonged. Reg. XI. 1812, sect. 3.

Government may order such persons committing such offences to be confined for such time as is deemed necessary.

2685. In cases in which the governor general in council is satisfied, on due inquiry and mature deliberation, that either the preservation of the tranquillity of the British territories, or of the dominions of the allies of the British government, or the maintenance of the relations of amity subsisting between the British government and other states, requires that any of the leaders or other persons of the above description, who have committed the offences mentioned in sect. 2 of this regulation, should be placed and detained under restraint, it is competent to the governor general in council to order any such persons, having committed any of the said offences, but not otherwise, to be apprehended and committed to confinement at such place and under the custody of such public officer, and detained in confinement for such time, as is deemed by the governor general in council necessary for the public good. Reg. XI. 1812, sect. 4.

Such persons committing such offences liable to what penalty.

2686. Any persons of the above description, or their descendants, who, while living under the protection of the British government, enter the country from which they or their ancestors have emigrated, or any foreign country, and excite or attempt to excite disturbances in the said countries, are liable to be brought to trial for that offence before the sessions court, and if convicted are to be sentenced to suffer imprisonment for the period of 7 years. Reg. XI. 1812, sect. 5, cl. 1.

Persons assisting such parties to commit such offences liable to what penalty.

Such cases to be submitted for mitigation to nizamut adawlut.

Government may in all cases order imprisonment as above.

2687. Any persons, whether native British subjects, or aliens, who furnish emigrants from foreign countries with any assistance, either of men, money, or arms, in prosecution of their attempts to excite disturbances in the country, from which they have emigrated, or in any other country, or otherwise aid such aliens in the prosecution of their criminal design, are liable to be brought to trial for that offence before the sessions court, and if convicted are to be sentenced to suffer imprisonment for the term of 7 years: provided however, that if the session judge, by whom the case is tried, is of opinion that the punishment, established by this and the preceding clause, should in any instance be mitigated, he is to submit the proceedings held on the trial to the nizamut adawlut, who will recommend to the governor general in council such alleviation of the prescribed punishment, as they judge proper: provided moreover that no sentence or order, which is passed on the trial of any persons under the provisions of this regulation, is competent, or is to be construed to preclude the governor general in council from the exercise of the power vested in the government by section 4. Reg. XI. 1812, sect. 5, cl. 2.

CHAPTER II.

OF OFFENCES AGAINST THE PUBLIC PEACE.

SECTION I.

OF STATE OFFENCES.

2688. It is competent for the ordinary tribunals to try charges of treason, rebellion, or other crime against the state. Act V. 1841, sect. 1.

May be tried before the ordinary tribunals.

2689. It is competent for the government of any presidency to issue a commission for the trial of any offences of treason, rebellion, or crime against the state by one or more judges, together with such law officers as are required, or without any such officer, according as it is deemed expedient. Act V. 1841, sect. 2.

But government may issue a commission for the trial of such offences.

2690. If government does not see fit to take the case out of the ordinary administration of criminal justice, the ordinary tribunals, established for the trial and punishment of offenders, are to proceed as usual. N. A. R. vol. 2, page 429.

Otherwise, the ordinary courts are to proceed as usual.

2691. The courts, convened under such commissions, are to try the prisoners brought before them in the same manner as in trials before the ordinary courts; and are to exercise all powers and authorities vested in such courts, except that their sentence, whether of acquittal or punishment, is in every instance to be reported with their proceedings to the highest court of the East India Company for criminal matters of the presidency, previous to carrying the same into execution; and they are to be guided as to the place where they are to assemble, the persons to be tried by them, and all other particulars not provided by any regulation, or by any Act of the governor general in council, by the special orders, which they receive from the executive government, or from the highest court of the East India Company for criminal matters in the presidency. Act V. 1841, sect. 3.

Such special courts are to be guided by the same rules as ordinary courts; except that their sentence is to be reported before execution to the nizamut adawlut: and they are to be guided by special orders of government.

2692. In case of the death, or of the absence from indisposition or other cause, of any of the judges or law officers of the courts, which are appointed to try offenders under this regulation, the remaining judge or judges, or law officer or officers, are to be competent to form a court, and to proceed with the trial or trials, until provision can be made by government for supplying the place of such judge or judges, or law officer or officers, if any such provision is deemed necessary; or, if no such provision is made, the powers and proceedings of the said courts are not to be affected by the death or absence of such judge or judges, or law officer or officers. Act V. 1841, sect. 4.

Rule in case of the death or absence of any judge or law officer of such courts.

2693. The highest courts of the East India Company for criminal matters of the respective presidencies, on the receipt of any trials referred to them under this Act, are to proceed thereupon according to the rules in force with respect to other trials referred to them; except that they are in every instance to report their sentences to the executive

Nizamut adawlut to proceed as usual, but to report their sentence to government.

government of the presidency for the time being; and are to wait the orders of government for the period of three calendar months, before they direct their sentence to be carried into execution. Act V. 1841, sect. 5.

Magistrates are to give information of such offences to government; and to be guided by the special orders of government.

2694. Where any person or persons are charged with the crimes mentioned in this Act, the magistrates are to give immediate notice thereof to the government; and are to pay immediate and strict attention to all orders, which are transmitted to them by government for the apprehension of persons charged as aforesaid, or for making any enquiry respecting such persons, or for committing them to take their trials before the ordinary courts, or before the special courts described in this Act. Act V. 1841, sect. 6.

Jurisdiction of supreme court.

2695. This Act is not to be construed to alter or affect the jurisdiction of any of Her Majesty's supreme courts of justice. Act V. 1841, sect. 7.

The functions of the ordinary criminal courts may be suspended, and martial law established during war, or open rebellion:

in such case persons owing allegiance to British government may be tried by courts martial for overt acts of rebellion, or for assisting the enemy.

2696. The governor general in council is empowered to suspend, or to direct any public authority, or officer, to order the suspension of, wholly or partially, the functions of the ordinary criminal courts of judicature within any zillah, district, city, or other place within any part of the British territories subject to the government of the presidency of Fort William, and to establish martial law therein for any period of time, while the British government in India is engaged in war with any native or other power; as well as during the existence of open rebellion against the authority of the government in any part of the territories aforesaid; and also to direct the immediate trial by courts martial of all persons owing allegiance to the British government, either in consequence of their having been born, or of their being resident, within its territories, and under its protection, who are taken in arms in open hostility to the British government, or in the act of opposing by force of arms the authority of the same, or in the actual commission of any overt act of rebellion against the state, or in the act of openly aiding and abetting the enemies of the British government within any part of the said territories.(a) Reg. X. 1804, sect. 2.

Such persons found guilty of such offences to be punished with death,

2697. Any person born, or residing, under the protection of the British government, within the territories aforesaid, and consequently owing allegiance to the said government, who, in violation of the obligations of such allegiance, is guilty of any of the crimes specified in the preceding section, and who is convicted thereof by the sentence of a court martial during the suspension of the functions of the ordinary criminal courts of judicature, and the establishment of martial law, is liable to the immediate punishment of death, and

(a) The preamble of this regulation is:—"Whereas during wars, in which the British government has been engaged against certain of the native powers of India, certain persons, owing allegiance to the British government, have borne arms in open hostility to the authority of the same, and have abetted and aided the enemy, and have committed acts of violence or outrage against the lives and properties of the subjects of the said government; and whereas it may be expedient that, during the existence of any war in which the British government in India may be engaged with any power whatever, as well as during the existence of open rebellion against the authority of the government, in any part of the British territories, subject to the government of the presidency of Fort William, the governor general in council should declare and establish martial law within any part of the territories aforesaid for the safety of the British possessions, and for the security of the lives and property of the inhabitants thereof, by the immediate punishment of persons owing allegiance to the British government, who may be taken in arms in open hostility to the said government, or in the actual commission of any overt act of rebellion against the authority of the same, or in the act of openly aiding and abetting the enemies of the British government within any part of the territories above specified;" &c.

is to suffer the same accordingly by being hung by the neck till he is dead. All persons who, in such cases, are adjudged by a court martial to be guilty of any of the crimes specified in this regulation, are also to forfeit to the British government all property and effects, real and personal, which they possessed within its territories at the time when the crime, of which they are convicted, was committed. Reg. X. 1804, sect. 3.

and confiscation of all property and effects.

2698. The governor general in council is not precluded by this regulation from causing persons charged with any of the offences, described in the present regulation, to be brought to trial at any time before the ordinary courts of judicature, or before any special court appointed for the trial of such offences, under Act V. 1841(a), instead of causing such persons to be tried by courts martial, in any cases, in which the latter mode of trial does not appear to be indispensably necessary. Reg. X. 1804, sect. 4.

But these provisions do not preclude the trial of such offences by the ordinary or the special courts described above, by order of government.

2699. Whenever martial law is proclaimed in the district under his authority, the magistrate is to direct all officers in command of troops, which are employed within his jurisdiction, to act under the proclamation until it is recalled; leaving it to the discretion of such officers to confine the operation of the proclamation to the principal person, or persons, concerned in any of the acts of rebellion described above, or to extend it to their principal adherents and followers, as the exigency of the case may require. If any person, charged with any of the overt acts of rebellion, specified in Reg. X. 1804, is apprehended by any military officer, when not in the actual commission of offences of that description, he is to be delivered over by the military to the civil power; and the magistrate is to commit him to close custody, and to adopt the necessary measures for bringing him to trial on a charge of high treason.(b) The magistrate is to attach all property, whether real or personal, which is situated within his jurisdiction, belonging to any person or persons, who are guilty of overt acts of rebellion against the authority of government; and to continue such property under attachment until the pleasure of government on the occasion is known. Whenever he attaches landed estates in virtue of this order, he is to place the same under the management of the collector of the district, with instructions to adopt the proper measures for realizing the revenues of such estates. Should the property of the rebels be situated in any other district, he is to make the necessary communication to the magistrate of such district, requiring him at the same time to attach the property in question, and to continue the same under attachment until he is furnished with the orders of government

Rules for the guidance of a magistrate, in whose district martial law is proclaimed.

Persons, apprehended by a military officer when not in the actual commission of overt acts of rebellion, are to be delivered over to the civil power.

Magistrate is to attach all property belonging to such persons, placing the landed estates under the management of the collector.

(a) The original mentions Reg. IV. 1799 and *(Ced. Prov.)* Reg. XX. 1803; but Act V. 1841 has entirely superseded those regulations, their provisions being re-enacted in it with some modifications.

(b) In English law high treason comprises, besides offences more immediately against the person of the Queen, — the levying war against the Queen by assembling with a number of persons (three or four is sufficient) armed and arrayed in a warlike manner with the intent to endeavour by force and arms to subvert the constitution and government of the realm; to force the Queen to put away her ministers, or any councillor, or other magistrate; to hold or defend any of the Queen's castles, &c. against the Queen or her forces, or to deliver them to rebels by treachery; to effect innovations of a public and general nature; or to obtain the repeal of a statute, or the redress of any public grievance, real or pretended:—the adhering to the Queen's enemies, by giving any assistance to such enemies, unless on a well-grounded apprehension of immediate death in case of refusal; by joining such enemies in acts of hostility against the realm, or even against the Queen's allies, although no acts of hostility are committed; or by sending money, arms, intelligence, or the like, to the Queen's enemies, although such money, intelligence, &c. be intercepted, and never reach them:—and the conspiring to incite foreigners to invade the realm. In all these cases some overt act must be proved. *Blackstone, Comyns, and Archbold.*

Military officers attaching property are to make it over to the magistrate.

for his further guidance in the disposal of the property. If any property of persons, charged with acts of rebellion against the state, is attached by any military officers, it is to be delivered over to the magistrate, whether the owners have been taken in arms or otherwise, and to be retained under attachment pending the orders of government. The commander in chief was required to make these rules known to all military officers, and to enjoin a strict adherence to them in all cases to which they are applicable. Govt. order, April 11, 1805.(a)

Resisting the police does not amount to rebellion.

2700. It was held that the magistrate ought to have proceeded as for resistance of process against certain parties assembling to resist by force and arms the authority of the police officers. But the criminality of the resistance was not affected by the illegality of the police officers' proceedings. N. A. R. vol. 2, page 225.

Precedents.

Seditious practices and disturbing the peace.

2701. Teepoo Paugul, the head of a religious sect, dissuaded the ryots from paying rent to the zumeendars, and from working on the military road then in course of formation by order of government; and collected rents and exacted contributions from the people on the faith of his sacred character, and under the pretence that he would soon become badshah, or king of the country. He also established a place called the regal court, and collected arms therein. The consequences of this conduct were various disturbances, in which the officers of government were resisted, and several police officers and other people murdered; but it did not appear that he was personally concerned in any of these outrages. The nizamut adawlut held that the whole of his conduct was too ridiculous and paltry to admit of its being considered high treason against the state; and he was accordingly convicted of seditious practices, and disturbing the peace, and sentenced to imprisonment for 5 years with labor. N. A. R. vol. 2, page 429.

Rebellion attended with various murders and other enormities, and attacking the magistrate.

2702. Teetoo Meer, having acquired a reputation for sanctity, collected about him a numerous body of followers, engaged in serious acts of outrage and rebellion, committed various murders and other enormities, and opposed by force of arms the joint magistrate of Baraset, who went out to quell the disturbance, killing several of the sepoys and others of his guard. He was killed by the military force, sent out against them; but 184 of his followers were put upon their trial, charged with rebellion, attended with murder and wounding, and attacking the joint magistrate. The only justification attempted was that certain complaints preferred by them in the joint magistrate's court had been dismissed. The court convicted one of having headed the insurgent force, he having been conspicuously and actively engaged in the attack and massacre of the joint magistrate's party, and sentenced him capitally;—13 convicted of the principal charge were sentenced, 11 to imprisonment for life, and 2 in consequence of their youth (aged 18 and 20) for 7 years; —109 convicted of the minor part of the charge were sentenced, 18 ringleaders to imprisonment for 5 years, 40 for 4 years, 38 for 3 years, 10 for 2 years (9 in consideration of wounds, and 1, the son of Teetoo Meer, with reference to his youth and the evil influence and untimely loss of his father), and 3 discharged without punishment in consequence of loss of limbs from wounds;—57 were acquitted and released, 3 died before trial, and one was found to be insane. N. A. R. vol. 4, page 198.

(a) Harington's Analysis, vol. 1, page 350.

2703. In a trial for rebellion in the Tenasserim provinces, in which one life was lost, and the officers of government were resisted with arms, the court, at the recommendation of the commissioner (who, although he had recorded a sentence of death against him, proposed a mitigation of the punishment) sentenced the ringleader to imprisonment for life in the local jail, as a better warning to others than transportation beyond seas; 2 to imprisonment for 14 years; 4 for 10 years; 10 for 5 years; and 2 for 2 years; all with labor in irons. N. A. R. vol. 6, page 36.

Rebellion attended with the loss of one life, and resistance to the officers of government.

2704. In a case of rebellion in Cuttack, which, although not attended with murder, and speedily put down, yet occasioned severe calamities to numerous families, and was not the first nor second instance of this crime in the district, the nizamut adawlut sentenced 4 persons to transportation for life, 2 as ringleaders, one as having been only lately released from jail after an imprisonment of fourteen years for being concerned in a former rebellion, and one as being at the time he was engaged in the rebellion a thana burkundaz; 21 persons to imprisonment for 5 years with labor and irons; 24 to imprisonment for 4 years without irons, and a fine of 25 rs. each in lieu of labor; and 15 to imprisonment without irons for 3 years, and a fine of 20 rupees each in lieu of labor:— 7 died, and the remainder were acquitted. N. A. R. vol. 5, page 46.

Rebellion not attended with murder, but involving acts of oppression and extortion.

Mahomedan law.

2705. The Mahomedan law recognizes four descriptions of rebels, or persons who resist the authority of the rightful imâm: of these the first two are no better than, and are considered as, highway robbers, the only difference being that one acts upon some pretext of justification; the third are insurgents (*kharijee*) who assemble in a large body, and possessing the means of resistance, withdraw from their obedience to the imâm on the plea that his title to the office is invalid, and that therefore it is justifiable to make war upon him; and the fourth are *baghat*, those who simply withdraw themselves from obedience to the rightful imâm. The two last classes only are subject to the peculiar provisions of the law which relate to rebellion. It seems doubtful how far the British government in India can be considered by lawyers as the rightful imâm; but this much has been conceded by the law officers, that the territory of the East India Company may be accounted "dar-ool-islam," and the provisions for bughawut, or rebellion, consequently held applicable upon trials for treason and insurrection against the established government.(a)—On the occurrence of a rebellion, it is incumbent on the imâm to endeavour, in the first instance, to remove the cause of dissatisfaction, and to recal the rebels to their allegiance by fair means; but he is not at the same time to neglect more forcible measures, such as may be sufficient to quell the insurrection at once. "Shafeï maintains that it is not lawful to make war upon rebels, until they commit acts of hostility, because it is not lawful to kill Mussulmans but for the purpose of repulsion, and rebels are Mussulmans; contrary to the case of infidels, the commencing war with whom is lawful, as their infidelity legalizes

Four descriptions of rebels.

Who is the rightful Imâm.

Rebellion is to be put down by fair means, if possible.

Opinion of Shafei that force cannot be applied to rebels, until they have committed acts of hostility; and that rebels flying from battle are not to be pursued.

(a) Mr. Harington says, "they have indeed rather erred in straining the application of these provisions to cases for which they were not intended; and as they do not authorize more than imprisonment, except during actual resistance, or for the purpose of quelling an open rebellion (when prisoners and fugitives may be put to death, if it appear necessary), the convicts have been declared liable to less punishment, under the special rules of tazeer for bughawut, than might have been inflicted, at the discretion of the ruling power and its judiciary delegates, on the general principles of seasut." *Analysis, vol.* 1, *page* 295.

the putting them to death." He also says that "in neither case [whether they have a force in reserve or not] are their wounded to be slain, or those of them who fly from battle pursued, because the slaying of them is not lawful, but for the purpose of repulsion; and upon a rebel being disabled, or flying from battle, the slaying of him is no longer for the purpose of repulsion, and consequently is illegal."(a) But this doctrine is opposed by Aboo Haneefa and his disciples, who hold it lawful to judge of the intent of such persons by their overt acts, such as the assembling of an armed force. It seems however to be agreed that rebels should be immediately seized, and imprisoned until they repent, "in order that their wickedness may be (as far as possible) repelled." The property of rebels is not liable to confiscation, but is to be held in trust by the imâm until they repent, in which case it is to be restored to them. No punishment attaches to the murder of one rebel by another while in a state of rebellion; because, it is said, "the authority of the rightful imâm did not extend over him at the time of the murder." The sale of arms and ammunition to rebels, knowing them to be such, is an offence: but the rule does not apply to the materials used in the construction of such arms.(b)

Property of rebels to be held inviolate.

During rebellion one rebel may murder another.

Arms may not be sold to rebels.

(a) It was on the ground of these opinions of Shafei, that the law officers declared the defendants, in the case cited in para. 2702, not liable to any legal penalty. But the futwas were justly disregarded by the nizamut adawlut, not only because they were contrary to the principles of natural justice, but also because the opinion of Shafeï carries no weight when opposed to the doctrine of Aboo Haneefa and his two disciples, "whose authority is paramount, and exclusively governs judicial decisions in Bengal and Hindostan, as well as at Constantinople, and other seats of Mahomedan dominion in Turkey and Tartary." Mr. Harington also observes that the doctrines of Shafei have a limited prevalence only on the sea-coast of the Peninsula, and among the Malays.

(b) Hedaya, book 9, chap. 10. The above provisions, as Mr. Harington observes, look upon rebellion as a religious rather than a civil offence; and aim at prevention or suppression of the actual insurrection only, without providing by exemplary punishment against the recurrence of similar attempts. The necessity of a new law for the definition and punishment of crimes against the state was suggested to government in 1801 by the futwas of the law officers upon the trials, held in the preceding year, of the Nawab Shums-oo-doulah, and Meerza Jan Tupish; who were tried for being concerned in Vizeer Ali's conspiracy against government, and as accomplices in the murder of Mr. Cherry and other persons at Benares, in January 1799. Shums-oo-doulah was convicted "of attempts to enter into league with the sovereigns of other countries for the purpose of subverting the British government in Bengal; of endeavouring to connect himself with the zemindars of Behar with the design of exciting an internal commotion; and of keeping up a treasonable correspondence." Meerza Jan Tupish was convicted of the charge of treason preferred against him "in being joined in the counsels of Shums-oo-doulah; in instigating the sending petitions and letters to Sooltan Zuman Shah and his ministers of state; and in representing as a great advantage to Shums-oo-doulah the collusion of the zemindars of soobah Azeemabad on the strength of a mokhtarnamah from them, which was a mere forgery, and without foundation." Yet in both cases the prisoners were declared by the futwas of the law officers of the special court who tried them, and of the nizamut adawlut, liable only to "imprisonment, until they should show signs of repentance to the satisfaction of the ruling power;" and the sentence accordingly passed upon each of them by the nizamut adawlut was "to be imprisoned until the governor general in council shall be satisfied with the sincerity of their repentance." Upon the exposition of the Mahomedan law which governed this sentence, the governor general in council (in a letter to the nizamut adawlut, dated July 9, 1801) observed, that "the principle, on which this interpretation of the law is founded, appears to be, that the invasion of foreign powers, whom the criminals had solicited to attack the British possessions, and the plans of the same criminals for exciting internal insurrection in those possessions, had not been actually carried into effect. Under the native administration, this defect in the law would probably have been supplied by the exercise of that arbitrary power uniformly assumed in such cases by the Mahomedan government. But as the British government has wisely and honorably precluded itself from the exercise of such power, and has bound itself to administer justice according to the Mahomedan law, until that law shall be expressly altered, it is evident that the British power in India must be continually exposed to the most serious danger, unless this obvious defect

SECTION II.

OF AFFRAYS.(a)

Vernacular terms.

2706. The word "affray," in all criminal proceedings, is to be rendered "khanahjungee" (in Bengalee "danga hangama"); and the term "hangama" is to be restricted to indicate a riot or tumultuous assembly. C. O. No. 37 of vol. 3.

Magistrate warned against superficial investigation, and the connivance of the police and omlah with the zumeendars.

2707. The court warn the magistrates against a superficial investigation of the causes of affrays, and against the connivance of the police officers and omlah with the landholders, who are generally the instigators of affrays. They observe that, if an affray takes place near a thana without any exertion of the darogah to prevent it by timely interposition or notice to the magistrate, there must be a presumption against him of gross neglect, or corruption and collusion. And they direct therefore the vigilant attention of magistrates to the conduct of the police officers, zumeendars, and omlah, and require their prompt interposition, not only to prevent the immediate mischief, but also to determine the right of possession to the land, which is the subject of dispute.* The truth of the case will be best ascertained by witnesses unconnected with either of the parties. C. O. No. 50 of vol. 1.

* *v. para.* 2755 *et seq.*

Duties of police.

To be present at fairs, &c.

2708. The darogahs of police are to proceed in person, or to depute one or more of their officers, as circumstances may require, to attend and maintain the peace at fairs, and during the celebration of festivals, at all places where any considerable number of persons are collected together. Reg. XX. 1817, sect. 18, cl. 1.

The darogah, mohurrir, or jemadar, is immediately to proceed to the spot, on receiving intimation,

2709. On receiving intimation of any tumultuous meeting or assemblage of persons, or of any projected riot or serious disturbance, whether arising from trespass or disputes regarding land, crops, tanks, watercourses, reservoirs, or other causes, the darogah is either

of the Mahomedan law, with regard to the punishment of crimes committed against the state, be corrected." The nizamut adawlut were directed, in consequence, to frame the draught of a regulation conforming to the principles of English law with regard to the crime of treason, as far as local circumstances might admit, both in the definition of the crime, and in the punishment of persons convicted of it. This regulation though draughted, was never passed; it being considered sufficient to enact Reg. X. 1804, the provisions of which have been cited in the text. In the case noted above, Meerza Beg and others, convicted of having accompanied Vizeer Ali, in arms, to Mr. Cherry's house, were declared liable to "tazeer at the discretion of the ruler of the country;" and Meerza Beg, who appeared to have taken an active part in the massacre, was sentenced by the nizamut adawlut, on the 5th August, 1799, to suffer death. *Harington's Analysis, vol.* 1, *page* 294.

(a) The term "affray" has a much more extended signification in this code than that assigned to it, in English law, and seems to include not only the *affray*, but also the *riot*, *rout*, and *unlawful assembly*, and perhaps some other offences, of that code. The *riot*, *rout*, *and unlawful assembly* appear to differ only as to the execution of, or motion to execute the purpose intended; and may be defined to be — a tumultuous disturbance of the peace by 3 or more persons, assembling together of their own authority, with an intent mutually to assist one another against any one who should oppose them in the execution of some enterprize of a private nature, involving some circumstance of actual force or violence, or at least an apparent tendency thereto, *in terrorem populi*, but not necessarily involving any act of personal violence. The *affray* in the English legal sense is taken for a public offence to the terror of the people. There may be an *assault*, which will not amount to an *affray*, as when it happens in a private place out of the hearing or seeing of any except the parties concerned; and there may be an *affray* which does not amount to a *riot*, as when a sudden disturbance occurs between people who have met together on a lawful occasion. An *affray* may be committed by 2 persons, a *riot* by not less than 3. No quarrelsome or threatening words whatever amount to an affray. *Russell and Archbold.*

and is first to require the landholder to disperse the disputants;

to proceed in person, or to cause the mohurrir, or jemadar, to repair immediately to the spot; and the police officer, employed on such duty, is, in the first instance, to proceed to the residence of the zumeendar, talookdar, or farmer, in whose estate or farm the disputants are said to be, and to require him instantly to cause them to disperse. Reg. XX. 1817, sect. 18, cl. 2.

then to try to persuade them to have recourse to arbitration or law;

then to warn them of the consequences;

then to strive to seize the leaders;

then to collect evidence regarding the parties;

and lastly to set people to watch, and to report to the magistrate.

2710. In the event of this measure proving insufficient, he is to endeavour to prevail on the parties to disperse, and either to adjust their differences among themselves by arbitration or punchaet, or to have recourse to a court of judicature for the decision of their claims. In the event of such endeavours proving fruitless, the police officer, who is present, is to declare aloud that if any person is killed, wounded, or violently beaten, all persons concerned in the affray will be brought to trial before the criminal courts. The police officers are at the same time to strive to seize the leaders, or principal offenders; and in the event of their failing so to do, they are to endeavour to ascertain their names and places of abode, and to collect sufficient evidence, if practicable, from persons unconnected with the parties, of the circumstances of the affray, the causes which led to it, and who were the first aggressors; and, after taking these steps, they are to set people to watch the further proceedings of the parties, and immediately to communicate the whole of the particulars to the magistrate, who is to adopt the necessary measures for bringing the offenders to condign punishment. Reg. XX. 1817, sect. 18, cl. 3.

Police officers are not to assist either side; nor are burkundazes or peadahs to be deputed to protect property.

2711. The officers of police are required to proceed to the spot as above directed, and to use every precaution to prevent affrays; but they are to confine themselves to maintaining the peace, and are on no account to take part with or to afford assistance to either side in the dispute; and darogahs are strictly prohibited, unless under the special instructions of the magistrate, from deputing burkundazes, or muzkooree peons, to defend the property of either party applying for the aid of the police on the ground of alleged apprehension of affray. Reg. XX. 1817, sect. 18, cl. 4.

Darogah, in his report, is to describe the land or crops in dispute.

2712. If the cause of dispute is land or crops, the darogah, in his report to the magistrate, is to describe the land contested, or the quantity or quality of the grain; and in boundary disputes, where the claims of individuals may be better explained by a plan of the ground, he is to prepare and transmit, with his report, a sketch showing the outline and general position of the portions of land claimed by the contending parties. Reg. XX. 1817, sect. 18, cl. 5.

Trial.

Both parties need not be tried.

2713. It is not necessary that in every case of affray both parties should be committed for trial. Const. No. 778.

Participators cannot be admitted as approvers.

* *v. para.* 280.

2714. Affray not being enumerated in cl. 1, sect. 3, Reg. X. 1824*, as one of the offences in which a magistrate is authorized to tender a pardon to the persons concerned, the evidence of participators in a case of affray is not admissible against other individuals, implicated in the same offence. Const. No. 535.

Evidence to be balanced.

2715. The discrepancy of the evidence of the two parties in an affray affords no ground for the acquittal of those charged with being concerned therein: credit must be given to that evidence which appears best supported by the circumstances of the case. N. A. R. vol. 3, page 221.

2716. Should the late incumbent of a putnee talook, or his late under-tenants, continue to oppose the entry of the new purchaser, notwithstanding the issuing of a proclamation by the civil court declaring the just rights of the latter (for which he is at liberty to apply on meeting with opposition), or should there be reason to apprehend a breach of the peace on the part of any one, the aid of the police officers, and of all public officers, who are at hand and capable of affording assistance, is to be given to the new purchaser on his presenting a written application for the same; and in the event of any affray or breach of the peace occurring, the entire responsibility is to rest with the party opposing the lawful attempt of the purchaser to assume his rights. Reg. VIII. 1819, sect 15, cl. 3.

Parties opposing the entry of a purchaser of a putnee talook are to bear the entire responsibility of a consequent breach of the peace.

2717. In a case where an affray was the consequence of an attachment of property made by a peon under the order of a moonsiff, the court held that the officer serving the process is not necessarily bound to exhibit the warrant upon which he acts, if no demand is made for a sight of it. N. A. R. vol. 4, page 251.

Officer serving process is not bound to show his warrant unless demanded.

2718. Resistance offered by a farmer to persons legally authorized to distrain his effects, is a criminal act, and punishable by imprisonment, notwithstanding that the distress is levied in an irregular manner, as the farmer always has it in his power to gain redress by an application to a court of justice.(a) N. A. R. vol. 1, page 302.

Resistance to a legal process irregularly served, is a misdemeanor.

2719. It is no ground for a total remission of punishment that the accused were not of the aggressing party in an affray; as, by the rule established in the preamble of Reg. XLIX. 1793,(b) the having recourse to violent means either for enforcing or resisting disputed claims, is not only highly criminal, but unnecessary, from the parties having it at all times in their power to obtain redress by application to the courts of judicature: but the nizamut adawlut, in awarding punishment, may admit the circumstance to operate in mitigation. N. A. R. vol. 2, page 339.

Recourse to violent means, either for enforcing or resisting disputed claims, is a misdemeanor.

2720. It would be illegal to punish the person who profited by an affray, unless there were proofs that the person so punished had been guilty of instigating or conniving at it. Mere suspicion of instigation or connivance cannot warrant the infliction of punishment. Const. No. 619. C. O. No. 63 of vol. 2.

Persons, profiting by an affray, cannot be punished without proof of instigation or connivance.

Magistrate's powers.

Intent to commit.

2721. The act of assembling armed men, or taking other unlawful measures, with the evident intention of committing a breach of the peace, is an offence punishable by the magistrate as a misdemeanor under the discretionary powers vested in him by sect. 19, Reg. IX. 1807.* This is ruled in accordance with the Mahomedan law as well as the tenor of cl. 1, sect. 2, Reg. IV. 1825.(c) Const. Nos. 132, and 664.

* *v. para.* 507.

2722. Inconsiderable affrays, are classed among the petty offences, which the magistrate is competent to punish under sect. 8, Reg. IX. 1793, for which see paras. 505, and 2787.

Inconsiderable affrays.

(a) In English law the legality or illegality of the act intended to be done is not material, if there be violence and tumult. *Russell.*

(b) This is the original law for preventing affrays respecting disputed boundaries; but it has been repealed, as well as Reg. XV. 1824 by Act IV. 1840.

(c) This regulation contains the rules for requiring recognizances and security for keeping the peace; and the clause cited mentions incidentally the above offence as one cognizable by the criminal courts: see para. 2789.

Affrays regarding land, or crops, if unattended with homicide, severe wounding, or other aggravating circumstance, are in the competence of the magistrate.

2723. All persons charged with being concerned in affrays as defined in Reg. XLIX. 1793 (*Ced. Prov.* Reg. XXXII. 1803) [*i. e.* when any person having a claim to any disputed land, or crops, in the possession of another, attempts to possess himself of such land or crops by force] are, upon due proof of the offence, provided the affrays be unattended with homicide, severe wounding, or other aggravating circumstance, punishable by the magistrate or joint magistrate of the district, in which the affray has occurred, without commitment to the sessions court. Reg. I. 1822, sect. 3.

Punishment in such cases.

2724. In such cases the magistrate is competent to punish the offender by imprisonment, with or without labor,(a) for a period not exceeding one year, and a fine not exceeding 200 rupees, commutable if not paid to a further period of imprisonment not exceeding one year, so that the whole period of imprisonment in no case exceeds two years. Reg. VIII. 1828, sect. 3.

This refers only to affrays regarding lands or their produce.

2725. The above provisions are applicable only to cases of affrays regarding lands, and their produce; and cannot be made to apply to other cases of affray from whatever cause arising. Const. No. 1154.

Corporal punishment.

Affrays not to be referred to assistant not vested with special powers.

2726. It is not competent to a magistrate or joint magistrate in any case of affray to award corporal punishment [and therefore no additional imprisonment in lieu thereof]; nor is a magistrate to refer any such case for examination and decision to his assistant, unless such assistant is invested with the special powers, designated in sect. 2, Reg. III. 1821. Reg. I. 1822, sect. 4.

Sentence of labor in such cases.

2727. The power vested in a magistrate by the above provisions of awarding labor during the original term of imprisonment, must be considered to extend equally to the further period of imprisonment adjudged in default of payment of the fine imposed; subject, of course, as regards both periods to the rule laid down in cl. 1, sect. 3, Reg. II. 1834.* Const. No. 972.

* *v. para.* 929.

Limit of imprisonment.

2728. A magistrate is not competent, under the above provisions, to sentence a prisoner convicted of affray at once to two years' imprisonment. The period in addition to one year is awardable only in default of payment of a certain fine. Const. No. 774.

Security may be required in addition to above sentence.

2729. Reg. VIII. 1828 does not in any way interfere with the power vested in magistrates by Reg. IV. 1825 [to require security to keep the peace]. Under this construction a magistrate is competent to punish to the full extent of the power conveyed by the above provisions, and in addition to such sentence to require the prisoner to furnish security, or be imprisoned for a year in default; the whole term of imprisonment not exceeding three years, if the demand for security is not complied with. Const. No. 1290.

If attended with *slight* wounding.

2730. Under the terms of sect. 3, Reg. I. 1822, an affray attended with *slight* wounding lies within the competence of the magistrate. Const. No. 423.

In cases of wounding the instrument of offence is immaterial.

2731. In supersession of Const. Nos. 623 and 628 (by which cases of affray attended with wounding, if the wounds were inflicted by a sword, were ruled to be beyond the competence of a magistrate) it is declared that a magistrate is empowered, in such cases,

(a) Under sect. 3, Reg. II. 1834, fetters cannot be adjudged in such cases, and the prisoner must be allowed the option of commuting the labor by the payment of a specified fine: see para. 929.

to commit or punish, as he may judge most expedient, without regard to the instrument of offence, and with reference solely to the nature and extent of the injuries inflicted by the aggressors. C. O. No. 53 of vol. 3, para. 4.

Cases in which the servants of an indigo factory have been engaged.

2732. Under orders of government, the magistrates are required to submit to the commissioners of circuit, for their examination, every case of violent affray, attended with aggravating circumstances, in which the servants of an indigo factory have been engaged, whether the European at the head of the establishment has been included in the charge or not. The commissioner of circuit is to furnish with his annual report, in his capacity of superintendent of police, a specific statement of such cases. C. O. No. 22 of vol. 2.

Case to be committed if attended with homicide, severe wounding, or aggravating circumstances.

2733. In all cases of affray, attended with homicide, severe wounding, or other aggravating circumstance, the magistrate is to bring the offenders to trial before the sessions court, committing them to prison, or enlarging them upon bail, as the circumstances of each case appear to require. Reg. I. 1822, sect. 5.

Power of session judge.

Minimum of sentence.

2734. Whenever any person committed for trial to the sessions court, on a charge of affray attended with homicide, is convicted by the law officer with the concurrence of the session judge of such offence, it is not competent to the session judge to sentence the person so convicted to a less term of imprisonment than five years from the date of such sentence, with or without labor. Reg. II. 1823, sect. 2.

If such sentence appears too severe, trial to be referred.

2735. Whenever, with regard to any person or persons so convicted, the session judge is of opinion that the punishment above stated is more than adequate to the offence, he is to issue no sentence in the trial, but is to refer the case for the sentence of the nizamut adawlut, setting forth at large in his letter of reference the grounds on which he applies for a mitigation. Reg. II. 1823, sect. 3.

Maximum of sentence.

2736. Nothing in this regulation [*i. e.* in the two preceding paragraphs] is to be construed to alter the existing rules, by which a session judge is competent, in such cases, to pass a sentence of 7 years' imprisonment with or without the addition of labor; or those by which, where he considers even that punishment to be inadequate to the offence, he is authorized to refer the trial for a still heavier punishment to the nizamut adawlut.(a) Reg. II. 1823, sect. 4.

Corporal punishment, or imprisonment in lieu thereof, not to be adjudged.

2737. So much of Reg. II. 1823, or of any other regulation in force, as authorized the courts of circuit to adjudge corporal punishment by stripes in cases of affray, was rescinded by sect. 2, Reg. XII. 1825. And it is held by the nizamut adawlut that additional imprisonment, in lieu of corporal punishment, cannot be awarded on conviction of offences not punishable with such punishment before the passing of Reg. II. 1834. N. A. R. vol. 6, page 1.

Restriction of application of rule regarding minimum of punishment. It does not refer to unpremeditated cases, or to persons resisting aggression on property

2738. The minimum of punishment in cases of affray attended with homicide, established by the above provisions, is to be considered to apply to such cases only, in which both parties are found guilty of having had resort, by premeditation, to that mode of adjusting their differences;—and is not to be deemed applicable to cases arising out of a sudden quarrel, in which no premeditated purpose of affray is established;—nor to assaults

(a) The latter part of this section was repealed by cl. 1, sect. 7, Reg. XII. 1825; but, as that provision has been superseded by sect. 6, Act XXXI. 1841, the rule given in the text is still extant.

under their charge in self-defence.

or other aggressions in which the assailed party is not shown, by their previous preparation, or in any other way, to have been ready and intent to meet their adversaries in the field of combat;—nor is it to be construed to apply to cases of affray attended with homicide, in which persons guarding and protecting crops, grain, or property in a legal manner, are attacked by persons trespassing, or others, or who, in legal and just defence of the property under their charge, resist aggression in self-defence. In all such cases the session judges, agreeing with the futwas of their law officers, are to pass such legal sentence as is suitable to the offence of the several parties, the same as if Reg. II. 1823 had no existence. Reg. VI. 1828, sect. 2.

Judge to state in such case that the affray was unpremeditated.

2739. With reference to the above rules, the nizamut adawlut direct, that, whenever in cases of affray attended with homicide a sentence of less than five years' imprisonment is awarded, the session judge should invariably insert in his remarks on the trial that the affray was not premeditated on both sides. C. O. No. 178 of vol. 3.

Precedents.

Mahomedan law.

Affray with homicide;

2740. The nizamut adawlut would not recognize the distinction made by the Mahomedan law between him, who is proved to have struck the deceased in an affray, and those present aiding and abetting.(a) [But this dictum appears to be superseded in practice by subsequent decisions; see paras. 2742 and 2743.] In this case all the prisoners were sentenced to five years' imprisonment. N. A. R. vol. 1, page 299.

instigating but not present;

2741. The prisoner, though there was no proof that he was actually present, was convicted of having instigated and directed an affray attended with homicide and wounding; and was sentenced to imprisonment in banishment for life. N. A. R. vol. 1, page 8.

with homicide and wounding;

2742. Affray attended with homicide and wounding; the prisoners, who inflicted the wounds and were most active, were sentenced to 10 years', the instigators and leaders to 7 years', and the remainder to 5 years' imprisonment, all with labor and irons. N. A. R. vol. 2, page 370.

with homicide;

2743. Affray with homicide; the prisoner who killed the deceased was sentenced to 10 years', four others to 7 years', and one to 3 years' imprisonment with labor and irons; one prisoner, in consideration of his youth, was sentenced to the mitigated punishment of imprisonment for one year. N. A. R. vol. 2, page 381.

2744. Affray with homicide. Sentence, imprisonment for 5 years. N. A. R. vol. 3, page 221.

2745. Affray with homicide, under circumstances of mitigation. Sentence, imprisonment for 2 years. N. A. R. vol. 2, page 339.

2746. Affray in which a havildar died from the effects of the blows, the affray having been produced by the misconduct of the sepoys. Two youths who were present were sentenced to imprisonment for one year. N. A. R. vol. 2, page 492.

with wounding;

2747. Affray attended with wounding. The court adverting to the respectability of one of the ringleaders remitted imprisonment, and sentenced the parties to pay fines according to their respective degrees of guilt; viz. the ringleader on one side fine of 300

(a) Any person taking part in a riot, whether by word, sign, or gesture, or by wearing the badge of the rioters, is himself a rioter; for in this case all are principals. *Russell.*

rupees, and his party fine of 10 rupees each, or imprisonment for 3 months; the ringleader on the other side fine of 10 rupees, and his party fine of 5 rupees each, or imprisonment for one month. N. A. R. vol. 3, page 141.

2748. Affray attended with wounding; sentence, four of the principals to 5 years' imprisonment, and five accessaries to 3 years' imprisonment. N. A. R. vol. 3, page 273.

with plunder, wounding, and abduction of persons thereafter missing.

2749. Affray attended with aggravating circumstances, the prisoners having made a violent attack upon a village, rifled certain houses, slightly wounded several persons, and violently abducted others thereafter missing. Sentence; the ringleader to 12, the two principals to 10, and the others as inferior agents to 7 years' imprisonment with labor in irons. N. A. R. vol. 5, page 21.

Case, in which defence was held justifiable.

2750. A party defended his house against a wanton and unprovoked assault, during which two of the assaulting party were killed. Held that the homicide was justifiable on the part of those who acted on the defensive; and the aggressors were sentenced to 5 years' imprisonment. N A. R. vol. 5, page 15.

In resistance of civil process, with murder;

2751. Affray with murder in resistance of civil process. The leaders were sentenced to imprisonment for life in Allipore jail; three most actively concerned to imprisonment for 14 years, and the rest to imprisonment for 7 years, all with labor in irons. N. A. R. vol. 2, page 387.

unaggravated;

2752. Affray in resistance of civil process. Sentence; the instigator to imprisonment for one year, and three others to imprisonment for 6 months. N. A. R. vol. 1, page 302.

with homicide;

2753. Affray with homicide in resistance of civil process. Sentence, one to imprisonment for 14 years, and two others for 7 years. N. A. R. vol. 4, page 251.

SECTION III.

OF THE PREVENTION OF AFFRAYS REGARDING LAND, AND OF SUMMARY SUITS IN CASES OF FORCIBLE DISPOSSESSION.

General applicability of the provisions of Act IV. 1840.

2754. With reference to the very general terms of Act IV. 1840, the nizamut adawlut hold that its applicability cannot be confined within the narrow circle of Reg. XV. 1824, which has been repealed by the present law, by which it is evidently intended to empower the magistrates to enquire into disputes relating to the possession of lands, of which before the passing of that enactment they were not competent to take cognizance. This resolution was recorded in order to supersede various constructions of Reg. XV. 1824, which restricted the interference of the magistrate to cases of dispossession or disputed possession in which the proprietors of the land were engaged, declaring it inapplicable to cases in which ryots or under-tenants disputed the right of cultivation only. C. O. No. 124 of vol. 3.

Magistrate how to proceed on being certified of a dispute regarding land, &c. likely to induce a breach of the peace.

2755. Whenever a magistrate is certified, that a dispute likely to induce a breach of the peace exists concerning any land, premises, water, fisheries, crops, or other produce of land, within the limits of his jurisdiction, he is to record a proceeding stating the grounds of his being so certified, and is to call on all parties concerned in such dispute (whether proprietors, dependent talookdars, farmers, under-farmers, ryots, or other persons) to attend his court in person, or by agent, within a reasonable time, and to give in a written statement of their respective claims as respects the fact of actual possession of the subject of dispute. And the magistrate is, without reference to the merits of the claims of any party to a right of possession, to proceed to inquire what party was in possession of the subject of dispute when the dispute arose; and, after satisfying himself upon that point, is to record a proceeding declaring the party whom he decides to have been in such possession to be entitled to retain possession, until ousted by due course of law, and forbidding all disturbance of possession until such time: and if necessary the magistrate is to put such party into possession, and to maintain him in possession, until the rights of the parties disputing be determined by a competent court. Act IV. 1840, sect, 2.

The party who was in possession at the commencement of the dispute to be kept in possession.

Subject of dispute to be attached if satisfactory proof of possession is not adduced.

2756. If the magistrate, in the cases mentioned in the preceding section, is unable to satisfy himself as to what party was in possession of the subject of dispute when the dispute arose, he may attach the subject of dispute until the rights of the parties be determined by a competent court, giving the collector information of the attachment; and if the subject of dispute be land, the provisions of Reg. V. 1827 regarding attachment by order of a civil court(a) are to apply to attachments by order of a magistrate made under this section. Act IV. 1840, sect. 3.

But attachment is not to be made pending decision of suit.

2757. A magistrate is not authorized to attach lands (paying revenue to government or under-tenures) pending the decision of such case, or to call on the collector to attach lands according to Reg. V. 1827, before he has come to a decision in the case. Const. No. 1347.

Magistrate how to proceed on receiving complaint that complainant has been forcibly dispossessed without authority of law.

2758. If any party complains to a magistrate that he has been without authority of law forcibly dispossessed of any land, premises, water, fisheries, crops, or other produce of land, within the jurisdiction of such magistrate, whether the same were possessed by such party as proprietor, dependent talookdar, farmer, under-farmer, ryot, or otherwise, the magistrate is to require the party or parties complained against, and any other parties concerned, to appear and make defence in person or by agent within a reasonable time; and if, after the examination of the necessary witnesses and documents, the complaint appears to him to be substantiated, he is to record a proceeding ordering the party complaining to be put again into possession of the subject of dispute, and maintained in possession until the right to possession be determined by a competent court; provided that no such order is to be passed, unless the party complaining of having been so dispossessed, prefers his claim within one month from the time of such dispossession. Act IV. 1840, sect. 4.

Complaint must be lodged within one month.

(a) The following is the rule of Reg. V. 1827 in such cases. The court wishing to attach landed property is to issue a precept to the collector of land revenue of the district wherein the land is situated, directing him to hold it in attachment, and to appoint a person for the due care and management of the estate under good and adequate security, for the faithful discharge of the trust, in a sum proportionate to the extent thereof. Persons having an interest in the property may appeal to the board of revenue against the person selected as manager by the collector. The precept above-mentioned is to state specifically the property to be included in the attachment; and the attachment is not to be withdrawn without a further precept from the court to that effect.

2759. Absolute proof of actual "forcible" dispossession is an indispensable condition to the restoration of the party complaining to possession; the mere assertion of an apprehension, that a breach of the peace will ensue, and that dispossession will follow, is insufficient, under the terms of sect. 4 of the Act, to legalize the reception and investigation of such complaints, it being obviously the intention of the law, that the complaint of having been "without authority of law forcibly dispossessed" of the disputed property shall be substantiated "by the examination of the necessary witnesses and documents,"—or, in other words, by the adduction of direct evidence, before any order can legally issue for the re-instatement of the party complaining in possession of the subject of dispute. The several criminal authorities, competent to try and determine suits under Act IV. 1840, are to be careful to observe the legal obligation above recited; and to remember that, in complaints of the nature adverted to, the only point to be established by the complainant is the fact of forcible dispossession. In like manner, the only point to be tried on revision of the case in appeal, is whether such forcible dispossession has been established or not; and any endeavour to ascertain and record "the right to possession" is not only irrelevant, but constitutes in fact an illegal and undue arrogation of authority on the part of the deciding officer: evidence of forcible dispossession carries with it, as a matter of course, proof of antecedent possession, the maintenance of which without reference to right is the object of the law, and the utmost limit of authority conferred by the Act under consideration. Session judges are desired to enforce a strict adherence to the foregoing principles in the decision of such cases, and to correct any departure therefrom which falls under their observation. C. O. No. 200 of vol. 3.

There must be direct evidence of forcible and illegal dispossession;

and this is the only point to be proved: the *right* to possession is not to be considered by the magistrate, or in appeal.

2760. If neither of the parties in a suit [brought into the magistrate's court under either sect. 2 or sect. 4] will appear and produce their evidence and proofs, the magistrate should strike the case off the file, taking such measures as appear necessary to prevent a breach of the peace, extending even to the attachment of the property in dispute if deemed necessary to secure such prevention. Should only one of the parties after due notice attend and produce his proofs, the case should be tried *exparte*. Const. No. 1029.

If neither party produces their evidence and proofs;

or if only one party.

2761. The party wrongfully dispossessed is to be restored to the possession of the land with the crop upon it, although the latter has been sown by the wrongful dispossessor. Const. No. 378.

Standing crops must go with the land.

2762. A, a ryot, asserting himself to be under engagements to B, an indigo planter, complains that C, another planter who states that he made advances to A, is about forcibly to cut the crop. Held that A being in possession may deliver the disputed plant to either B or C, and that the magistrate, under Act IV. 1840, may prohibit C from attempting to take forcible possession; C having his remedy in the civil court under Reg. VI. 1813 and Act X. 1836. Const. No. 1359.

The ryot who has cultivated the crop of indigo is in possession, and not the planter from whom he has received advances.

2763. The plaintiff having locked up his house at Jaunpore previous to his departure for Benares, his possession must be held to have continued during his absence; and the violent entry by the defendant, effected by forcibly opening a lock, must be considered to constitute a case of forcible dispossession.(a) Const No. 434.

Possession is retained during absence by locking the door of the house.

(a) This construction (of Reg. XV. 1824) held that the plaintiff's absence was a sufficient cause for the delay in bringing the suit; but Act IV. 1840 provides that no suit is to be admitted after the expiration of one month from the time of dispossession; and therefore there can be no sufficient cause for delay beyond that period.

Right of possession of purchaser not acknowledged to exclusion of the mortgagee in possession.

2764. It was held that a magistrate had clearly exceeded his powers in awarding possession to the purchaser of mortgaged property to the exclusion of the mortgagee, on the plea that the mortgage had been redeemed, although the purchaser up to the date of the dispute had never been in possession. Const. No. 393.

Mortgagee retained in possession against the proprietor, till formally dispossessed by civil court.

2765. In a dispute between a proprietor and a mortgagee of an orchard, the magistrate, considering the possession of the latter to have been satisfactorily established, directed him to be maintained in possession. The session judge, on appeal, reversed this decision, and directed the magistrate to maintain the proprietor in possession and to refer the mortgagee to the civil court. The nizamut adawlut held that the course adopted by the magistrate for the maintenance of the mortgagee in possession, till formally dispossessed by the usual process laid down in the regulations, was right. Const. No. 1366.

Case regarding chattels and moveable property.

2766. In a dispute regarding chattels or other moveable property, if the fact of illegal and forcible dispossession is established, the magistrate is competent to exercise interference in the case; but, if the property is found to have come into the possession of the party, with whom it is discovered, without proof of any violence or other illegal act in the acquisition, and such party has detained it on the plea of some claim or lien on the property, the matter is then one of civil and not of criminal cognizance. Const. No. 1349.

Boundary disputes may be determined under these provisions:

2767. A magistrate is competent to determine boundary disputes under these provisions; but he is of course merely to define the boundary of the land, which was in the possession of the party ousted before the dispute arose, leaving the question of right to be determined by the civil court. Const. No. 724.

but not in the western provinces, where the boundaries have been marked out by the revenue authorities.

2768. Magistrates are prohibited from taking cognizance under Act IV. 1840 of boundary disputes of the nature for which provision is here made [*i. e.* boundaries fixed and marked out in the western provinces by the revenue authorities who are likewise required to settle all disputes regarding them]. But whenever the magistrate has reason to apprehend any breach of the peace in consequence of a disputed boundary, he is to certify the circumstances to the collector of revenue, who is bound immediately to mark off the boundary, and to uphold the possession of the parties according to the demarcation. Act I. 1847, sect. 6.

Newly-formed land of which no party has had possession.

2769. If, in cases instituted under this Act, the subject of dispute be newly formed land, whereof it appears to the magistrate that no party has ever had possession, the magistrate is to award possession to the party to whom the right of possession belongs according to law or custom,(a) and is to maintain that party in possession, until the right to possession be determined by a competent court. Act IV. 1840, sect. 5.

(a) In determining claims to lands gained by alluvion, or by dereliction of a river, or the sea, under Reg. XI. 1825, the rule is that they are to be decided by immemorial and definite usage, when such is clearly recognized and established; but, when there is no such local usage, the land is to be considered an increment to the tenure of the person to whose land or estate it is annexed. This rule is not applicable to cases in which a river by a sudden change of its course intersects an estate. Churs or islands thrown up in a large and navigable river (the bed of which is not the property of an individual) belong to government, if the channel between such island and the shore is not fordable; but, if such channel is fordable at any season of the year, they are to be considered an accession to the estate most contiguous to them. If the bed of the river is private property, any sand bank or chur that is thrown up belongs to the proprietor thereof.

Disputes regarding right of use of any land or water by the public, or individuals, or classes of persons.

2770. If a dispute arises concerning the right of use of any land or water, the magistrate, within whose jurisdiction the subject of dispute lies, may enquire into the matter; and if it appears to him that the subject of dispute was open to the use of the public, or of any person, or of any class of persons, the said magistrate may order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of such person, or of such class of persons, as the case may be, until the party claiming such possession obtains the decision of a competent court adjudging him to be entitled to such exclusive possession. Provided that the magistrate is not to pass any such order as aforesaid, if the matter be such that the right of use is capable of being exercised at all times of the year, unless that right has been ordinarily exercised within three months from the date of the institution of the inquiry; or in cases where the right of use exists at particular seasons, unless such right has been exercised without discontinuance before the dispossession of which complaint is made. Act IV. 1840, sect. 6.

If a bund constructed by a person on his own land is injurious to the property of another.

2771. If a person should construct a bund on his own land, which proves injurious to the property of another, the case would come more properly within the jurisdiction of the civil than of the criminal courts; but cases may arise in which the immediate interference of the magistrate would be necessary and proper to prevent either a breach of the peace or any serious injury to the property of the complainant. Const. No. 1091.

Opposition to or contravention of orders of magistrate passed under this Act.

2772. Any person opposing by force the execution of an order for possession or use given under this Act, or refusing obedience thereto, or knowingly contravening the same, as long as it remains in legal force, is, together with all persons aiding and abetting, liable on conviction before a magistrate to be sentenced to simple imprisonment for a term not exceeding 6 months, or to fine not exceeding 200 rupees, commutable if not paid to a period of simple imprisonment not exceeding 6 months, or to both imprisonment and fine as aforesaid. Act IV. 1840, sect. 7.

Orders of magistrate are not affected by decisions of revenue authorities except pending settlement;

2773. In passing an order under these provisions, the magistrate need not be guided by a previous decision of the collector, unless such collector was at the time engaged in making a settlement, or was acting under the powers vested in collectors by sect. 16, Reg. VII. 1822, and sect. 2, Reg. IV. 1828; which latter provision suspends the powers of a magistrate to interfere in such disputes in regard to all mahals pending settlement,—the time of settlement being defined to commence from the date on which the settlement officer issues orders for adjusting the boundaries, for measuring any of the lands, or for making a census of the inhabitants of any village or portion of a village belonging to such mahal (of which intimation is to be given to the magistrate within whose division the village is situated), and to close with the day on which he is informed that the settlement as made and revised by him has been finally confirmed; and all police officers are required to give immediate and efficient support to the revenue officers in the execution of their duties.—In such cases, the previous summary decisions passed by magistrates may be revised, altered, or reversed by collectors, or other officers exercising the powers vested in them by this regulation, intimation of such revision, alteration, or reversal, being invariably given to the magistrate; and the parties in whose favor judgment is passed by the collector, or other officer above-mentioned, are to be maintained in possession, until the decision is altered

in which case such disputes are to be referred to the revenue authorities.

or reversed by a superior board or by a competent civil court. By cl. 2, sect. 34, Reg. VII. 1822, the magistrate is required to certify all cases of such disputes, in lands pending the settlement, to the revenue authorities, who are to investigate and determine the case, transmitting to the magistrate in cases of forcible dispossession, or forcible disturbance of possession, copies of their first proceeding in the case and of the roobakaree containing the final award. Const. No. 445. See also supplementary index to the constructions.

Decision to be upheld until set aside by a regular suit.

2774. A summary decision passed in a criminal court, affecting civil rights, should be upheld, until it is set aside by the judgment in a regular suit, even though the law under which it was passed has been subsequently altered. Const. Nos. 639 and 937.

Appeals lie as in other cases.

2775. All orders passed under this Act are appealable in the usual manner under the regulations and laws, that are or may be in force relating to appeals from the orders of magistrates or other officers exercising the powers of magistrates. Act IV. 1840, sect. 8.

Session judge may suspend execution of magistrate's order.

2776. The session judge is competent to use his discretion in suspending at any time the execution of the magistrate's final order, pending the decision of the case in appeal. Const. No. 1157.

Session judge cannot review his judgment.

2777. The application of a session judge to be allowed to review his judgment in an appeal under Act IV. 1840, was refused by the nizamut adawlut, on the ground that under sect. 6, Act XXIV. 1837, and sects. 2 and 3, Act XXXI. 1841, the order of the judge in such cases is final, and that Act IV. 1840 leaves no room for review. *Sevestre's Reports, vol.* 2, *page* 155.

Case may be referred to arbitration with the consent of all parties.

2778. In cases instituted under this Act, the magistrate is authorized, with the consent of all the parties, to refer the matter in dispute, so far as it is cognizable under this Act, to an arbitrator or arbitrators for decision, whose award is to be executed as if it were the award of such magistrate. Act IV. 1840, sect. 9.

Legal right of attachment or seizure not affected by these provisions:

2779. Nothing in this Act contained is to affect the legal exercise of any right of attachment or seizure vested by law in any parties. Act IV. 1840, sect. 10.

and this plea must be disposed of, before the magistrate enters upon the question of previous possession.

2780. Cases wherein the landholder has a right of distraint or seizure under the existing regulations, as where a party retains possession of land leased out to him notwithstanding the expiry of the lease, are to be governed by sect. 10; and on the right of distraint or seizure being pleaded, it is incumbent on the magistrate to dispose of that plea, before entering on the question of previous possession, with a view to the decision of that single point. The principle of Act IV. 1840 does not differ from that of existing regulations; the same principle will consequently govern the decision in cases of the above nature, as would have governed them had the Act never been passed; and the landholder is to be maintained, now as previously to the passing of the Act, in the exercise of his just and legal rights, with this difference, that the decision now rests with the criminal, instead of as formerly with the civil authorities. C. O. No. 54 of vol. 3.

2781. In a suit instituted under Act IV. 1840, should the auction purchaser plead that he, in attaching the talook of a putneedar created by the former proprietor, is only exercising his legal right, the magistrate is under sect. 10, to satisfy himself whether the contested tenure is of that description which is protected by law: in cases in which the tenure is not of that description, the purchaser is not obliged to apply to any court for the enforcement of his right. Const. No. 1312.

So, in a case of putnee talooks attached by a new purchaser.

2782. In disputes between zumeendars and kutkenadars, not for possession of defined portions of land, but for the right of management and collection of estates, the zumeendar who possesses the right of attachment should be held in possession, the other party being referred to a civil suit to determine whether the zumeendar has justly exercised that right. Const. No. 1333.

So, in disputes between zumeendars and kutkenadars, for right of management and collection.

2783. A superintendent of police may order a magistrate to take up a case of disputed possession, although the latter does not deem that measure necessary for the preservation of the peace. Const. No. 886.

Superintendent of police may direct enquiry.

2784. A civil court cannot stay the execution of an award under Act IV. 1840, pending the decision of a suit instituted to reverse it. Summary cases S. D. A. April 26, 1847.

Civil court cannot interfere until decision of regular suit.

2785. Assistant magistrates vested with special powers are competent to decide cases under the provisions of Act IV. 1840, when such cases are referred to them by the magistrates to whom they are subordinate; and such assistants are to deal with such cases in the same way as magistrates are competent to deal with them under the said Act. Provided always that the magistrates may at all times recall from such assistants any depending cases which have been referred to them under this Act, and which for the more speedy administration of justice, or for any other reason, the magistrates deem it proper to determine themselves in the first instance. Act XXVII. 1845, sects. 1 and 2.

Assistants with special powers may decide such cases referred to them.

2786. In a case of disputed possession, the plaintiff asserted that the lands were situated in Purneah, the defendant that they were in Bhaugulpore. The magistrate of Purneah was informed that he should proceed in the investigation; and if it should appear that the lands were in Bhaugulpore, he should refer the parties to the magistrate of that district, and certify to that officer the proceedings held by him in the case. Const. No. 694.

Case of doubtful jurisdiction.

2787. This Act does not extend to any place beyond the limits of the presidency of Fort William in Bengal, or to the settlements of Prince of Wales' Island, Singapore, or Malacca, or to any place situated within the local limits of the jurisdiction of Her Majesty's supreme court at Calcutta. Act IV. 1840, sect. 11.

Limitation of extension of Act.

CHAPTER III.

OF OFFENCES AGAINST THE PERSON.

SECTION I.

OF ABUSE.

How punishable.

* *v. para.* 505.

† *v. para.* 1711.

‡ *v. para.* 242.

2788. Abusive language and calumny are noted in sect. 8, Reg. IX. 1793 (*Ced. Prov.* sect. 8, Reg. VI. 1803)* among the petty offences declared to be within the competence of the primary powers of magisterial officers. By cl. 1, sect. 12, Reg. XX. 1817,† police officers are not to take cognizance of such cases; and all investigations for the purpose of ascertaining the truth or falsehood of such charges are invariably to be conducted by the magistrate in person or his assistant, under sect. 6, Reg. VII. 1811.‡ The books contain no further provisions respecting such cases; but slander of whoredom is one of the five offences for which specific penalties have been prescribed in the koran, and it is therefore necessary to record shortly the provisions of the Mahomedan law regarding it.

Mahomedan law regarding slander of whoredom.

2789. This crime is defined to be, the false imputation of whoredom against a married man or woman, who is free, sane, adult, of the Mahomedan faith, and of chaste repute, *i. e.* free from any suspicion of adultery. The reason for requiring chastity in the accused is, "because no scandal attaches to any other persons than those who are of chaste repute, and the accuser of an unchaste person moreover speaks truly." Equivocal expressions are construed according to the apparent intention of the speaker; and in a case of mutual recrimination, both parties incur the punishment of slander. But no penalty is due for imputing whoredom to a person who has actually committed the offence, whether in the particular instance stated, or in any other; provided the fact be established, either by the positive testimony of four competent witnesses; or by the voluntary acknowledgment of the party accused; or by the evidence of two men, or one man and two women, in proof of a confession of the fact. It is necessary that the slandered person if living, or if dead that the person whose lineage is affected by the imputation, should prosecute the charge and demand the stated punishment, because in this case the right of the individual is blended with the public right; and if the sentence is required by such prosecutor, the offence being legally proved, the magistrate is bound to order the infliction of the penalty. The free confession of the accused, or the evidence of two credible male witnesses, is required to prove the accusation; and a confession once made cannot be retracted. The prescribed punishment is eighty stripes for a free person, and forty for a slave; and the testimony of a person, who has once suffered this punishment for slander, is for ever afterwards inadmissible. The slanderer of a deceased person may be prosecuted, if it can be shown that the slander affects the living; and the lapse of time is no bar to the prosecution. It is

commendable to relinquish the prosecution of a charge of this nature; and the magistrate is authorized to advise the complainant to renounce his claim, at any time before the charge is established. A single punishment for slander, as for whoredom and wine-drinking, includes all past offences, the design not being private satisfaction, but on a principle of public justice to deter people by an example from the perpetration of such offences; but if a person is guilty of any two, or of all three, of those offences, a separate punishment is to be inflicted for each.(a)

SECTION II.

OF PENAL RECOGNIZANCES AND SECURITY TO KEEP THE PEACE.

Persons convicted of a breach of the peace, or of an intention to commit such, may be required, by the court passing the final order, to give mochulka, with or without security, to keep the peace for one year if the sentence is passed by the magistrate, or 3 years if passed by the session judge or nizamut adawlut.

2790. Whenever a person charged with a serious affray, assault, or other violent breach of the peace, or with causing, aiding, or abetting the same, or with assembling armed men, or taking other unlawful measures, with the evident intention of committing the same, is convicted of such charge before any criminal court by which the offence is cognizable; and the court, by which a final sentence or order in the case is passed, is of opinion that it is just and necessary to require a mochulka, or penal recognizance for keeping the peace, with or without security, for the same purpose, from the person so convicted; it is competent to the court, passing the final sentence or order, in such cases to direct that the person so convicted be required to execute a mochulka, or formal engagement, in a sum proportionate to the party's condition in life, and the circumstances of the case, for keeping the peace during such period as it appears proper to fix in each instance; not exceeding one year from the time of the prisoner's discharge, if the sentence or order is passed by a magistrate, joint magistrate, or other officer exercising the functions of a magistrate; or three years, if the sentence or final order is passed by a sessions court, or the court of nizamut adawlut. Reg. IV. 1825, sect. 2, cl. 1.

Such court also in requiring security may provide that the party failing to give security be imprisoned for corresponding periods.

2791. In cases of an aggravated nature, wherein it appears necessary to require security for keeping the peace in addition to the mochulka of the party, it is also competent to the court passing the final sentence or order to direct the same; and to fix the amount of the security-bond (which should never be excessive, and should in all cases be such as it would be proper to enforce in the event of a breach of the engagement) to be executed by the surety or sureties; with a provision that, if the same be not given, the party required to find the security is to be kept in custody for any time not exceeding the period specified in the preceding clause, according as the order is passed by a magistrate, or session judge, or by the nizamut adawlut. Reg. IV. 1825, sect. 2, cl. 2.

(a) Harington's Analysis, vol. 1, page 271; and Hedaya, book 7, chapter 5.

Magistrate may authorize officer serving a warrant to require security for keeping the peace as well as bail.

2792. When a magistrate, issuing a warrant for the apprehension of any person accused of a heinous offence, deems it right to authorize the officer, to whom the warrant is committed, to receive bail for the appearance of the accused, he may at the same time authorize such officer to require from him security for keeping the peace while the charge is under investigation;—as has already been noted in para. 232. In such case the security-bond is to be in the form No. 5 of appendix A. Reg. IX. 1807, sect. 3, cl. 3 and 5.

So, police officers may in certain cases require such security in addition to bail;

2793. So, in cases of manifest necessity, when the darogah or other officer of police is apprehensive of danger to the public tranquillity by the enlargement of a person arrested on a charge of affray, violent assault, or other bailable offence, without security being taken for his peaceable conduct; the party apprehended is to be required, in addition to the bail for his appearance, to furnish security for keeping the peace while the charge is under investigation, and the surety (or sureties) is to execute a recognizance according to the form No. 14 of appendix A, in an amount to be regulated by the circumstances of the case, and the condition of the person executing the same. Reg. XX. 1817, sect. 25, cl. 11.

on plain paper.

2794. Security-bonds taken by police officers should be drawn out on unstamped paper. Const. No. 710.

But magistrates may in all cases of necessity require mochulkas, not exceeding 200 rupees, although the party has not been convicted of a specific offence.

2795. Nothing in Reg. VIII. 1818, or in any other regulation in force, is to be construed to preclude the magistrates, or joint magistrates, from taking mochulkas, or penal recognizances, according to established usage, in all cases wherein it appears just and necessary to require the same, for the maintenance of the peace in their respective jurisdictions, although the parties bound in such recognizance have not been convicted of any specific offence: provided that the amount of the recognizance in all such cases be proportionate to the condition in life of the person required to execute the same, and in no instance without conviction of a specific charge exceed the sum of 200 rupees. Provided also, that the proceedings of the magistrate, or joint magistrate, in all such cases are to be open to the revision of the sessions court, in the event of any petition complaining of or objecting to the order of the magistrate, or joint magistrate, being presented to that court. Reg. IV. 1825, sect. 4.

Appeals from such orders of magistrates.

2796. The appeal from the order of the magistrate under the above provision lies to the session judge, whether the order is passed in a regular criminal trial, or on the report of a police officer or in any other miscellaneous proceeding: and such appeals should be received at all times, whether the judge is sitting in the sessions court or not. The order of the session judge in such cases is made final by Act XXXI. 1841. Const. No. 1031. See Index to Constructions, page 57, No. 32.

Magistrate cannot order darogah to require mochulka from a person until he has been heard in his defence.

2797. A magistrate is not competent to direct the darogah to require a person to enter into a mochulka to keep the peace, before he has been heard in his defence; after he has heard the defence, he may, if necessary, require the party to execute such mochulka in his presence. Const. No. 620.

The magistrate cannot require security

2798. The regulations do not vest the magistrates with a general power to demand security to keep the peace, whenever there may appear grounds to sanction the measure.

The cases in which the magistrate has power to require mochulkas from individuals, and to demand security for keeping the peace, are detailed in the provisions above quoted, and it does not seem proper to extend that power any further. Const. No. 831.

or mochulkas except in the cases above specified.

2799. The provisions contained in sects. 5, 6, and 7, Reg. VIII. 1818 are to be considered applicable to all prisoners confined on requisition of security for keeping the peace, under the present regulation, and to the sureties for such persons. [These rules regard the power of the magistrate to release such prisoners, when they are of opinion that they can be set at liberty without hazard to the community; see paras. 2666 to 2669;—they prohibit the removal of prisoners confined in default of security to the jail of a different zillah without the sanction of government, except in emergent cases; see paras. 2299 and 2301;—and they declare in what manner sureties can obtain release from their responsibility, and the continuance of the responsibility after the death of the surety; see paras. 2664 and 2665.] Reg. IV. 1825, sect. 3.

Release of such prisoners,

and prohibition against their removal.

Rules regarding sureties.

2800. The magistrate must be guided by the provisions of Reg. IV. 1825 in regard to the requisition of penal recognizances from persons, of whatever description, who are subject to his jurisdiction in his capacity of a magistrate of the East India Company: but when it appears necessary to take such recognizances in his capacity of justice of the peace, he should consult the advocate general, if in doubt as to their legality or otherwise. Const. No. 446.

Rule when the magistrate takes recognizances as justice of the peace.

2801. When a magistrate desires to enforce the forfeiture of recognizances for keeping the peace, which he has taken in his capacity of justice of the peace, he is to transmit such recognizance before the next ensuing sessions of the supreme court to the clerk of the crown, as the only proceeding for the forfeiture is in the supreme court. The recognizance should always distinctly specify the time for which it is to continue in force. Govt. order, June 9, 1830.

Magistrate how to proceed to enforce the forfeiture of recognizances taken by him in his capacity of justice of the peace.

2802. It follows from the exposition of the law contained in the foregoing order, that the amount of the penalty of such recognizances is not limited by the amount of penalty which a magistrate is authorized to levy from an European under 53 Geo III. chap. 155, sect. 105. Const. No. 826.

Limitation of amount of such recognizances taken from Europeans.

2803. Construction No. 529, which declares specially empowered assistants competent to require mochulkas and security under Reg. IV. 1825, is rescinded. C. O. No 211 of vol. 3.

Power of assistant.

SECTION III.

OF ASSAULT AND WOUNDING.(a)

Inconsiderable assaults.

2804. Inconsiderable assaults are classed among the petty offences punishable, under sect. 8, Reg. IX. 1793 (*Ced. Prov.* sect. 8, Reg. VI. 1803), by officers empowered to adjudicate criminal cases.* Those of a more serious nature must be dealt with by officers exercising higher powers, or by the magistrate, or committed to the sessions, according to the degree of violence used or the nature of the injuries sustained.

* *v. para.* 2787.

Cases of bone-fracture are to be disposed of by the magistrate, or committed to the sessions, according to the extent.

2805. The mere circumstance of a bone-fracture does not take a case of assault out of the cognizance of a magistrate; it being left to him to determine, with reference to the extent of the injury, and other considerations of a similar nature, what cases of this description should be disposed of by himself, and what made over for trial to the sessions court.

(*a*) The term assault is used in regulation law in the vulgar acceptation of the word rather than in the legal sense of the English code; the offences included in the latter under the heads assault and battery, are designated by the former as assault and wounding. In English law,—an *assault* is an attempt or offer with force or violence to do a corporal hurt to another; and the act must be accompanied with such circumstances as denote at the time an intention, coupled with a present ability, of using actual violence against the person of another. If the defendant's demeanor naturally impressed the plaintiff with the idea that he was about to strike him, it is an assault, notwithstanding his real intention was to do him no harm. The injury need not be direct from the hand of the party; as there may be an assault by encouraging a dog to bite; so, by exposing a person to the inclemency of the weather; or by an unlawful imprisonment or detention of the person. Mere words however can never amount to an assault. So, if a man strike at another, but at such a distance that he cannot by possibility touch him, it is no assault: but if A advance in a threatening attitude towards B to strike him, and be stopped just before he is near enough for his blow to take effect, it is an assault. A *battery*, in the legal acceptation of the word, includes beating and wounding. To beat, also, in the legal acceptation of the term, means not merely to strike forcibly with the hand, or a stick, or the like, but includes every touching or laying hold (however trifling) of another's person or clothes in an angry, revengeful, rude, insolent, or hostile manner: as, for instance thrusting or pushing him in anger; holding him by the arm; spitting in his face; jostling him out of the way; pushing another man against him; striking a horse upon which he is riding, whereby he is thrown; or the like. If a man strike at another with a cane or fist, or throw a bottle at him, or the like, if he miss him, it is an *assault*; if he hit him, it is a *battery*. A *wounding* is where the violence is so great as to draw blood, by striking or stabbing him with a sword, knife, or other instrument, or by shooting, or by striking him with a cudgel, or fist, or the like; and includes incised wounds, punctured wounds, lacerated wounds, contused wounds, and gun-shot wounds. It is a good defence to prove that the alleged battery happened by misadventure (but this is subject to the general rule given in para. 81); or that it was an amicable contest, as in wrestling; or that it happened by accident whilst the defendant was engaged in some sport or game which was neither unlawful nor dangerous. So, it is a good defence, that the prosecutor assaulted or beat the defendant first, and that the defendant committed the alleged battery merely in his own defence; or in the defence of another person: but then it must be such only as was necessary for the defence, and not excessive, or by way of revenge after all danger from the assailment was passed: also, it is a sufficient answer to this defence, to prove that the first assault was justifiable. The defendant may justify a battery by proving that he committed it in defence of his possession; but then the force used must not be excessive, or more than was actually necessary. Lastly, it is a good defence to prove that the defendant, as an officer of justice, arrested the prosecutor by virtue of a certain process, which is the alleged battery complained; but the officer cannot justify any actual force except in case of resistance or attempt at rescue, and then no greater degree of force than was necessary to secure the prisoner. *Comyns, Russell, and Archbold.*

And it is not competent to the latter authority to cancel a commitment made by the magistrate under this discretionary power, merely on the ground of a difference of opinion in regard to the tribunal before which the case should be brought, and by which consequently the amount of the punishment is to be regulated. C. O. No. 53 of vol. 3, paras. 2 and 3.

of the injury and intent of the aggressor.

2806. So also, in cases attended with wounding, if the wounds have been inflicted with a sword (which cases were formerly held to be beyond his competence), the magistrate is empowered to commit or to dispose of the case himself as he judges most expedient, without regard to the instrument of offence, and with reference solely to the nature and extent of the injuries and the apparent intent of the aggressor. C. O. No. 102 of vol. 3.

So, in cases attended with wounding.

2807. In cases of wounding, the commitment should not be made until the result of the wounds has been put beyond doubt, either by the recovery from danger, or the death of the wounded person. Const. No. 558.

Commitment not to be made, until result of wounds is known.

2808. When a wounded individual is sent by the magistrate for examination as to the nature and extent of his or her wounds, it rests with the surgeon to decide whether such person is to be placed in the hospital for treatment, or not; and the surgeon's order on this point is to be conclusive. C. O. No. 142 of vol. 3.

The surgeon is to decide whether a wounded person sent to him for examination is to remain in the hospital or not.

2809. Any person convicted of having unlawfully and maliciously intended to wound, maim, or otherwise do corporal injury to one individual; and of having, in the prosecution of such intention, accidentally wounded, maimed, or otherwise corporally injured another individual; is to be held punishable for the act committed by him with such unlawful and malicious intention, in like manner as if such act had been perpetrated on the person intended to have been wounded, maimed, or otherwise injured. The law officers of the sessions courts, in such cases, are to be required to state the punishment to which the prisoner would have been liable, if he had committed the act, of which he is convicted, upon the person intended to have been wounded, maimed, or otherwise injured by him; and the sessions courts are to pass sentence accordingly, or to refer the trial to the nizamut adawlut, as the case is referrible to that court, or otherwise, under the general regulations. *Beng. and Ben.* Reg. VIII. 1801, sect. 4. *Ced. Prov.* Reg. VIII. 1803, sect. 10, cl. 4.

Liability of persons intending to wound one person, and accidentally wounding another.

Procedure in sessions courts in such cases;

2810. In trials referred under the preceding section to the nizamut adawlut, the law officers of that court are also to declare in their futwa to what punishment the prisoner would have been liable, if the act of which he is convicted had been committed as intended by him; and the court after considering such futwa, with the whole of the proceedings in the case, are to pass such sentence on the prisoner, short of death, as they judge adequate to his offence. *Beng. and Ben.* Reg. VIII. 1801, sect. 5. *Ced. Prov.* Reg. VIII. 1803, sect. 10, cl. 5.

and in the nizamut adawlut.

2811. In all cases of wounding, manifesting a deliberate intention to commit murder, it is the duty of the magistrate to commit the prisoner to be tried on that specific charge. Reg. XII. 1829, sect. 2, cl. 1.

Commitment in case of wounding with intent to murder.

2812. In all trials for the specific offence described in the foregoing clause, the law officer sitting on the trial is to declare, whether the intention to commit murder be established. Reg. XII. 1829, sect. 2, cl. 2.

Futwa in such case.

Sentence in such case.

2813. If the law officer finds the intent to commit murder, and the judge holding the trial concurs therein, it is competent to him to pass such sentence of imprisonment as he deems adequate to the crime, not exceeding the period of fourteen years' imprisonment. Reg. XII. 1829, sect. 2, cl. 3.

If judge dissents from law officer in regard to intent to murder.

2814. In any case in which a session judge dissents from the futwa of the law officer, regarding the intent to commit murder, it is competent to the judge to make a reference to the nizamut adawlut, as under the like circumstances is in all other cases authorized by the general regulations. Reg. XII. 1829, sect. 3.

If judge agrees with the law officer.

2815. But, if the session judge agrees with the law officer in a case of this nature, he cannot refer it to the nizamut adawlut, but is bound to pass sentence under the above provisions. N. A. R. vol. 5, page 176.

Sentence to be passed in cases of wounding under futwa of *hukoomut-i-udl*;

2816. In many cases of corporal injury, extending even to *mayhem*, the law officers on the full conviction of the prisoners declared them liable to *hukoomut-i-udl* only, or a just award, which is construed by them to mean payment by the prisoner of the expences incurred for medicines and medical attendance by the party injured.(a) Such reparation being considered wholly inadequate, it is hereby enacted that the session judge is, under such futwa, competent to pass sentence of imprisonment for any period not exceeding seven years, with power to refer the record to the nizamut adawlut in any case, in which they deem that punishment inadequate; and on receipt thereof, the nizamut adawlut, after requiring a further futwa from their law officers, are to pass sentence of imprisonment for such limited period of time, as under all the circumstances of the case is equitable and just. Reg. IV. 1822, sect, 6.

which sentence may include corporal punishment.

2817. In a case in which certain convicts under sentence of perpetual imprisonment were found guilty of assaulting and cutting off the nose of the bukshee of the jail, and were declared by the law officer liable to tazeer as well as hukoomut-i-udl, it was held that the above provision does not preclude the judge from awarding corporal punishment under cl. 7, sect. 2, Reg. LIII. 1803.* N. A. R. vol. 2, page 362.

* *v. para.* 888.

Castration is punishable though effected with the consent of the person injured.

2818. The castration of any person, whether a slave or otherwise, is held criminal and punishable by the Mahomedan law, particularly if the offender is proved to have made it his professional or frequent practice; nor is the consent of the party allowed to obviate the punishment; which, in all cases, is left to the discretion of the governor of the country, or his representative, and to be proportioned to the magnitude of the offence. Such cases are to be treated as other heinous offences. C. O. Nos. 4, and 192 of vol. 1.

Precedents.

Assaults.

Attended with homicide;

2819. The prisoners, having been charged with murder, were convicted of homicide in heat of blood in sudden affray, and sentenced under circumstances of aggravation (three men assaulting one, and beating him when he had been felled to the ground) to imprisonment for 3 years. N. A. R. vol. 1, page 111.

(a) This is exactly in accordance with the Mosaic law:—"And if men strive together, and one smite another with a stone, or with his fist, and he die not, but keepeth his bed: if he rise again, and walk abroad upon his staff, then shall he that smote him be quit: only he shall pay for the loss of his time, and shall cause him to be thoroughly healed." *Exodus chap. XXI. v.* 18 *and* 19.

2820. Assault attended with homicide and beating. Sentence:—three persons to imprisonment for 10 years with labor, and another for 7 years with labor. N. A. R. vol. 2, page 323.

2821. Certain Mussulman prisoners convicted of a violent assault on a Hindoo zumeendar and his dependants, attended with arson and homicide, were sentenced to imprisonment with labor in irons for 14 years. N. A. R. vol. 5, page 83. *with arson and homicide;*

2822. On a charge of murder, the prisoners were convicted of a culpable assault on the deceased, in attempting to press him as a begar, in consequence of which he was accidentally drowned. Sentence:—one to 25 stripes and 3 years' imprisonment, and the other to 25 stripes and 2 years' imprisonment. N. A. R. vol. 1, page 142. *with accidental drowning;*

2823. Two prisoners, charged with highway robbery, were convicted of assault and taking property under color of being custom-house officers, and sentenced to 20 stripes and 3 years' imprisonment with labor. N. A. R. vol. 1, page 315. *with forcibly seizing property under false pretences;*

2824. A prisoner convicted of an outrageous assault, and of having violently entered the prosecutor's house and pursued and insulted his wife, was sentenced to imprisonment with labor for 7 years. N. A. R. vol. 2, page 333. *with forcible entry;*

2825. A prisoner was convicted of beating the prosecutor with a large stick, and thereby breaking his arm; but he was discharged without further punishment in consequence of the imprisonment he had already undergone. N. A. R. vol. 3, page 309. *with bone-fracture.*

2826. Assault by a convict under sentence upon the magistrate, while in the execution of his duty. Sentence:—15 stripes and 7 years' imprisonment with irons and handcuffs in addition to former sentence. N. A. R. vol. 1, page 329. *By a convict on the magistrate.*

2827. A seapoy on guard was convicted of an attempt to assassinate the magistrate in the execution of his duty, from motives unknown, by presenting a musket at his body, and on its missing fire attempting to draw his sword for the same purpose. Sentence:—imprisonment for life in the Allipore jail. N. A. R. vol. 2, page 357. *By a seapoy on the magistrate with attempt to assassinate.*

2828. A person was convicted of attempting to stab the magistrate while in the execution of his duty. The prisoner was carrying arms during the mohurrum in opposition to an order of the magistrate, by whom he was required to give them up; on his refusal some peons endeavoured to disarm him, and the consequence was his attempt to stab the magistrate. The judge referred the case to the nizamut adawlut; but the court held that he was bound to pass sentence as the case was within his competence, and returned the proceedings. The prisoner was then sentenced by the judge to 5 years' imprisonment with hard labor; and the nizamut adawlut confirmed the sentence, directing at the same time that the practice of depriving individuals of their weapons, being illegal, should be discontinued except in cases where there is reasonable ground to apprehend danger of a breach of the peace from their being carried by their owners. N. A. R. vol. 3, page 196. *Attempt to stab a magistrate by a person bearing arms in opposition to the magistrate's order, such order being in itself illegal.*

2829. Four persons were convicted of violently assaulting a moonsiff, while in the execution of his duty, and resisting and destroying the process of the civil court. They were sentenced, one to imprisonment without labor and irons in the civil jail for 1 year, *Assault on a moonsiff, with resistance of process.*

and a fine of 1000 rupees or further imprisonment for 1 year; two to the same imprisonment for 1 year and a fine of 200 rupees; and the fourth to imprisonment with hard labor for 18 months. N. A. R. vol. 2, page 304.

Assault by a burkundaz upon the darogah.

2830. A police burkundaz, in a quarrel with the darogah, fetched his blunderbuss (not proved to be loaded), and threatened to shoot him. The court, deeming him guilty of violent and insubordinate behaviour to his superior officer, and not being satisfied that his intent was murderous, sentenced him to be imprisoned without labor and irons for 6 months. N. A. R. vol. 2, page 402.

By police officers upon an old man.

2831. A police darogah convicted of having ordered one of his inferior officers to beat the deceased, an old man aged 70 years, was acquitted of murder, as there was no proof that the beating occasioned the death; but was sentenced to one year's imprisonment, and dismissal from office. N. A. R. vol. 1, page 341.

Case of acquittal from insufficiency of evidence.

2832. Two prisoners were convicted and sentenced by the commissioner to 5 years' imprisonment for an aggravated assault, attended with wounding, plundering, and abduction; but were acquitted by the nizamut adawlut on a revision of the proceedings; the court with reference to the improbable nature of the charge, and the discrepancies in the depositions of some of the witnesses, deeming the evidence insufficient for conviction. N. A. R. vol. 4, page 41.

Maiming.

Castration.

2833. A prisoner convicted of castrating a boy with his consent, from which operation death ensued, was sentenced under all the circumstances of the case (the youth and ignorance of the prisoner, the absence of all malice, the express desire of the deceased, and the fact that such operation was not unusual among hermaphrodites) to imprisonment for 2 years. N. A. R. vol. 3, page 17.

Cutting off wife's nose.

2834. The prosecutrix entered into a written agreement with her husband, the prisoner No. 1, authorizing him to cut off her nose, or otherwise maim her, in the event of her acting improperly. Detecting her in adulterous intercourse, he cut off her nose; and being prosecuted by her, he was convicted of that offence, and sentenced to imprisonment for 5 years: and No. 2, of aiding and abetting in that offence, to imprisonment for 3 years. N. A. R. vol. 1, page 296.

Cutting off the noses of uncle's widow and her paramour.

2835. A prisoner, convicted of cutting off the noses of his uncle's widow and her paramour, pleaded the criminal intercourse of the parties as a justification; but the law officers rejected this plea on the ground that he did not stand to his uncle's widow in the relation of a mohrim, *i. e.* one to whom it is permitted to enter the haram. The act was premeditated and deliberately executed; and the prisoner was sentenced to imprisonment and hard labor in banishment for 7 years. N. A. R. vol. 1, page 327.

Cutting off the ear of a thief.

2836. A prisoner was tried for cutting off the ear of a man who had burglariously entered his house during the night, and was acquitted as no guilt was considered to attach to the act. N. A. R. vol. 3, page 285.

Mutilation of wife; punishment remitted at her request.

2837. A prisoner was convicted of cutting off his wife's hand; but no punishment was awarded in consequence of the prayer of the injured party that her husband should be released. N. A. R. vol. 1, page 344.

Mutilation of husband; no punishment inflicted from defect in the law.

2838. A girl, 12 years old, was accused of cutting off the membrum virile of her husband. There was no doubt of her guilt; but the husband filed a razeenamah absolutely renouncing all claims upon the prisoner; and the law officers declared her not liable to any punishment both on account of her non-age, and because, as the act constituted a private not a public wrong, and as the individual injured relinquished his claim, the public prosecutor had none whatever. The court did not concur in the futwa, but judged themselves incompetent under the existing law to punish, and therefore released the prisoner.(a) N. A. R. vol. 2, page 29.

Wounding.

WITH INTENT TO KILL,

in prosecution of theft;

2839. A prisoner convicted of wounding the prosecutor's child with intent to murder, and of robbing it of its ornaments, was sentenced to imprisonment for life. N. A. R. vol. 3, page 195. In a similar case in which the prisoner was guilty of atrocious cruelty, he was sentenced to 39 stripes and imprisonment in transportation for life. N. A. R. vol. 1, page 332.

on account of wife's adultery;

2840. The prisoner overheard his wife making an assignation with the prosecutor, and lay in wait for them; and as he found them in the act of adultery, cut at them with his sword with intent to kill both; but they effected their escape without being severely wounded. The law officers declared him entitled to his release. The commissioner considered that the lying in wait with a murderous intent deprived the prisoner of that degree of excuse which warranted acquittal; but the nizamut adawlut, agreeing with the law officers, directed his immediate discharge. N. A. R. vol. 4, page 98.

2841. A prisoner convicted of wounding his wife with intent to kill, in consequence of her persisting in an adulterous intercourse with another man, was sentenced to imprisonment with labor for 5 years. N. A. R. vol. 2, page 421.

on account of jealousy;

2842. A prisoner, convicted of wounding with intent to kill, from motives of jealousy, by cutting the throat of a woman with whom he had cohabited, was sentenced to 14 years' imprisonment with labor. N. A. R. vol. 3, page 162.

2843. In a case of a prisoner committed for trial on a charge of "severely wounding," it was held that the commissioner was not competent to convict and sentence him for the more serious offence of "wounding with intent to murder." It appeared that the jealousy of the prisoner was excited by observing the admission of another person to share in the favors of a woman with whom he cohabited; and that he therefore took an opportunity during the night of wounding them so severely that they narrowly escaped with their lives. Under these circumstances the court were of opinion that the prisoner should have been committed under sect. 2, Reg. XII. 1829, on the charge of wounding with intent to kill; and accordingly annulled the former commitment, and the proceedings on the trial, and directed him to be re-committed and put on his trial on that charge. He was accordingly re-tried, and sentenced by the commissioner to 14 years' imprisonment, under cl. 3, sect. 2, Reg. XII. 1829. The nizamut adawlut, deeming the prisoner convicted of deliberate intent to commit murder, annulled the sentence as inadequate, and sentenced him to be imprisoned for life. N. A. R. vol. 4, page 59.

(a) Such cases have since been provided for by sect. 3, Reg. IV. 1822. See para. 1062.

2844. A prisoner was convicted of dangerously wounding his wife with intent to kill her. His own account was that he was actuated by motives of jealousy; but it was held that his suspicions, had there been any cause for them, could not have justified him in going armed and avenging himself in such manner. He was sentenced to 14 years' imprisonment in banishment with hard labor. N. A. R. vol. 2, page 211.

from revenge;

2845. A prisoner was convicted of wounding his infant daughter with intent to kill her, and throwing her as dead at the door of a person with whom he had quarrelled, under the notion that the guilt of her innocent blood would lie on the head of his enemy. Sentence:—imprisonment for 7 years. N. A. R. vol. 1, page 340.

2846. A prisoner was convicted of wounding with intent to kill; but acquitted of the murder of the deceased person, in consequence of a doubt whether the wounding was the sole and immediate cause of the death, which under the Mahomedan law must be established in order to warrant kisas. Sentence:—imprisonment for life. N. A. R. vol. 1, page 272.

from enmity;

2847. Prisoner convicted of wounding with intent to murder, the apparent motive being enmity against the wounded person, who had been appointed to check his expenditure, and had exercised a vigilant supervision over him. Sentence:—imprisonment with hard labor for life in the Allipore jail. N. A. R. vol. 3, page 279.

in revenge for refusing to have criminal connection;

2848. A prisoner having been convicted by the commissioner of wounding with intent to kill his sister-in-law (for refusing to have connection with him), and sentenced to 14 years' imprisonment with labor, the nizamut adawlut, on a revision of the proceedings, deemed the sentence inadequate, and sentenced the prisoner to imprisonment for life. N. A. R. vol. 4, page 81.

2849. So, in another case of the same nature, where the commissioner passed sentence of imprisonment with labor for 7 years', the nizamut adawlut commuted it to imprisonment for life in the Allipore jail. N. A. R. vol. 4, page 175.

in a quarrel;

2850. A prisoner was convicted of wounding his wife with intent to kill, being incensed at her on some account which did not clearly appear. Though little injury resulted from the wounds, he was sentenced to 14 years' imprisonment with hard labor. N. A. R. vol. 2, page 207.

2851. A prisoner was convicted of wounding his wife in consequence of a quarrel with her; and the sentence passed on him by the session judge was enhanced from 2 to 7 years' imprisonment with labor in irons.(a) He would have been convicted of wounding with intent to kill, had not the session judge omitted to state to him that part of the charge which denoted the aggravating circumstances of his crime. N. A. R. vol. 5, page 162.

from motives unknown;

2852. Prisoner convicted of wounding with intent to kill, the motive unknown. Sentence:—imprisonment with labor for 10 years. N. A. R. vol. 2, page 269. In a similar case, the sentence was imprisonment for 10 years with hard labor in banishment. N. A. R. vol. 3, page 17.

(a) The session judge was informed, that his sentence was illegal under sect. 3, Reg. II. 1834; as imprisonment for two years should be without irons and with labor commutable to a fine.

WITHOUT MURDEROUS INTENT,

2853. A prisoner, convicted of severely wounding the prosecutor with a sword, in revenge, was sentenced under sect. 4, Reg. XVII. 1817, in opposition to the futwa which acquitted on the ground of there being but one eye-witness besides the prosecutor, to imprisonment with hard labor for 7 years. N. A. R. vol. 2, page 239.

from revenge;

2854. A prisoner, convicted of wounding his wife with a dao on slight provocation, was sentenced, notwithstanding the prosecutrix waived her claim and prayed for his release, to imprisonment for 5 years with hard labor. N. A. R. vol. 1, page 367.

in a quarrel;

2855. A prisoner, convicted of severely wounding five persons with a sword and spear, was sentenced to imprisonment for life in consequence of the aggravated nature of the offence. In this case, two other persons were committed for trial for having deliberately cut off the hands of the prisoner, after he had perpetrated the above acts; but it appeared that they did so with a view to his apprehension and in self-defence; and the nizamut adawlut, considering their conduct meritorious, and not such as to have warranted their being committed for trial, ordered their immediate release and rewarded them with 50 rupees each. N. A. R. vol. 1, page 310.

from motives unknown;

2856. The prisoner having wounded the prosecutors, who entered his house and attempted to seize him without a legal process, was not sentenced to any punishment. N. A. R. vol. 2, page 407.

in self-defence.

Maltreatment.

2857. A prisoner convicted of blinding his wife with a hot iron on slight provocation, was sentenced to imprisonment with hard labor for 14 years. N. A. R. vol. 2, page 427.

Blinding.

2858. A prisoner convicted of atrocious cruelty towards a boy, in beating him, and thrusting a stick besmeared with chillies up his anus, thereby occasioning his death, was sentenced to imprisonment for life in the Allipore jail. N. A. R. vol. 3, page 97.

Attended with homicide;

2859. In a case of gross maltreatment and torture (apparently to extort a confession of theft) which ended in the death of the person abused, the prisoners were convicted of aggravated culpable homicide, and sentenced, the principal to imprisonment for 14 years, three for 10, one for 7, and one for 2 years, with labor. N. A. R. vol. 2, page 378.

with torture and homicide;

2860. A woman convicted of maltreatment of a female slave was sentenced to imprisonment for 12 months; and the slave, in consideration of the injurious treatment which she had experienced from her mistress, was declared free. N. A. R. vol. 1, page 55.

with torture;

2861. A prisoner convicted of extorting confessions by violence was sentenced to imprisonment for 3 years with labor and irons. N. A. R. vol. 3, page 310.

with violence.

2862. The prisoners, who were the darogah, mohurrir, and burkundazes of a police thana, were convicted of gross maltreatment and torture to extort a confession on a false charge of dacoity; and were sentenced, the darogah and mohurrir for ordering and permitting the torture to 14 years' imprisonment without labor and irons; two burkundazes for actually inflicting the torture to 14 years' imprisonment with labor in irons; and one for being present aiding and not preventing it to imprisonment for 3 years without irons and a fine of 50 rupees in lieu of labor. N. A. R. vol. 6, page 18.

By police officers.

2863. A police darogah was convicted of oppression and maltreatment of eighteen persons charged with dacoity, by confining them in a small room for four days; and was sentenced to imprisonment in the civil jail for 6 months, and a fine of 200 rupees commutable to a further term of imprisonment for 6 months; and measures were taken to prevent his future employment in the public service. N. A. R. vol. 5, page 75.

Mahomedan law.

Cases in which retaliation is incurred.

2864. Maiming and other injuries not affecting life entitle the party injured, in certain cases to retaliation, in others to fine. The former is incurred only when strict equality can be maintained in effecting the retribution, and when the offence is wilful,—the intention being judged of by the circumstances exhibited in evidence without regard, as in cases of homicide, to the weapon or instrument used. In order to preserve the equality necessary to kisas, the condition of the person injured, and that of the person to be retaliated upon, must be the same; and there must be a certainty that the consequences of the retaliation will not be more severe than those of the original injury. On these principles retaliation cannot be claimed, if one party be a man, and the other a woman; or one a slave, the other free; or where both parties are the slaves of different persons and of different value; nor is the right limb to be amputated for the left: nor a sound member for an unsound one; nor are dismemberments to be made except at the joint, from the difficulty of maintaining equality, as well as the danger to life in enforcing it: for the same reason it is not allowed in cases of fracture or injury to the bones, excepting the teeth which may be extracted with safety. A difference of religion, however, does not bar the demand for retaliation; as the Mussulman and infidel subject are considered to be on an equality with respect to personal protection, and the payment of fines.

Cases in which the injured party is entitled to pecuniary compensation.

2865. Cases in which retaliation is not incurred subject the offender if the fine is wilful, or his akilah if it is accidental, to the payment of *ursh*, or the fine of blood in cases short of life; the amount of which, in some cases of severe injury, is specifically fixed, and where a sense has been destroyed is equal to diyut. In minor cases the amount of the fine is adjusted by supposing the wounded person a slave, and ascertaining his difference of value with or without the wound he has received.

In both cases the penalty may be compounded or remitted.

2866. Both kisas and ursh, for personal injuries not affecting life, are open to composition between the parties; and the injured person may in either case remit the penalty.(a)

(a) Harington's Analysis, vol. 1, page 265. Hedaya, book 49, chap. 3.

SECTION IV.

OF HOMICIDE AND MURDER. (a)

2867. Magistrates, sending bodies to the civil surgeons for examination, are to furnish them with all available information regarding the alleged cause of death. C. O. No. 152 of vol. 3.

Bodies sent to civil surgeon.

(a) The English law presumes every homicide to be murder, until the contrary appears. Therefore the prosecutor is not bound to prove malice, or any facts or circumstances beside the homicide from which it may be presumed; but in such a case it is only presumed, and the defendant may rebut that presumption by proving that the homicide was *justifiable*, or *excusable*, or that at most it amounted to *manslaughter* only, and not to *murder*.

Justifiable homicide is of three kinds:—1. Where the proper officer executes a criminal in strict conformity with the terms of his sentence. 2. Where an officer of justice, or other person acting in his aid, in the legal exercise of a particular duty, kills a person who resists or prevents him from executing it; but in this case the homicide is not justifiable without an apparent absolute necessity. 3. Where the homicide is committed in prevention of a forcible and atrocious crime; as, for instance, if a man attempt to rob or murder another, and be killed in the attempt, the slayer shall be acquitted and discharged. So a woman is justified in killing one who attempts to ravish her; and so too the husband or father may justify killing a man, who attempts a rape upon his wife or daughter; but not if he take them in adultery by consent, for the one is forcible and felonious, but not the other.

Excusable homicide is of two kinds:—1. Where a man doing a lawful act, without any intention of hurt, by accident kills another; as, for instance, where a man is working with a hatchet, and the head by accident flies off and kills a person standing by. This is called homicide *per infortunium*, or by misadventure. 2. Where a man kills another upon a sudden rencounter, merely in his own defence, or in defence of his wife, child, parent, or servant, and not from any vindictive feeling; which is termed homicide *se defendendo*.

Manslaughter is the unlawful and felonious killing of another, without any malice either expressed or implied. It is of two kinds:—1. Involuntary manslaughter, where a man doing an unlawful act, not amounting to felony, by accident kills another. 2. Voluntary manslaughter, where, upon a sudden quarrel, two persons fight, and one of them kills the other; or where a man greatly provokes another by some personal violence, &c., and the other immediately kills him.

Murder is thus defined by Lord Coke: "when a person of sound memory and discretion unlawfully killeth any reasonable creature in being, and under the king's peace, with malice aforethought either express or implied." 1. It must be committed by a person of sound memory and discretion; it cannot be committed by an idiot, lunatic, or infant, unless indeed he shew a consciousness of doing wrong, and of course a discretion or discernment between good and evil. But if any person procure an idiot, &c., to murder another, the procurer is guilty of the murder, although, perhaps, not present at the time it was committed.—2. It must be an unlawful killing, not excusable or justifiable. It may be by poisoning, striking, starving, drowning, and a thousand other forms of death by which human nature may be overcome. Taking away a man's life by perjury is not, it seems, in law murder; although, *in foro conscientiæ*, it is as much so as killing with a sword. If a man however do any other act, of which the probable consequence may be, and eventually is, death, such killing may be murder, although no stroke were struck by himself; as was the case of the unnatural son who exposed his sick father to the air against his will, by reason whereof he died; of the harlot, who laid her child in an orchard, where a kite struck it and killed it; and of the mother, who hid her child in a pig-stye, where it was devoured. So, if one, under a well-grounded apprehension of personal violence, do an act which causes his death (as, for instance, jumps out of a window, or into a river), he who threatened is answerable for the consequences. If a man have a beast that is used to do mischief, and he knowing it suffer it to go abroad, and it kill a man, this, it seems, is manslaughter in the owner; but if he had purposely turned it loose, though merely to frighten people, and to make what is called sport, it is as much murder as if he had incited a bear or a dog to worry them. If a man have a disease, which in all likelihood would terminate his life in a short time, and another give him a wound or hurt, which hastens his

Mode of proceeding in such trial in the sessions court.

* *v. para.* 772.

2868. In trials for murder before the sessions court, after the proceedings have been concluded in the prescribed manner,* the law officer of the court, who has been present during the trial, is to be required by the judge to declare whether the prisoner is convicted of the charge against him, and is to subscribe his answer on the record of the court's

death, this is such a killing as constitutes a murder. So, if a man be wounded, and the wound turn to a gangrene or fever for want of proper applications, or from neglect, and the man die of the gangrene or fever; or if it become fatal from the refusal of the party to submit to a surgical operation; this is also such a killing as would constitute murder; but otherwise, if the death of the party were caused by improper applications to the wound, and not by the wound itself. And it is a general rule, that, to make the killing murder, the death must follow within a year and a day after the stroke or other cause of it.—3. The person killed must be "a reasonable creature in being, and under the king's peace." For, to kill a child in its mother's womb is no murder; but if the child be born alive, and die by reason of the potion or bruises it received in the womb, it may be murder in the person who administered or gave them. So, if a mortal wound be given to a child whilst in the act of being born, for instance, upon the head as soon as the head appears, and before the child has breathed, it may be murder, if the child is afterward born alive and dies thereof. But it must be proved that the entire child has actually been born into the world in a living state; and the fact of its having breathed is not a conclusive proof thereof. But the fact of the child's being still connected with the mother by the umbilical cord will not prevent the killing from being murder.—As to the words "the king's peace," they mean merely that it is not murder to kill an alien enemy in time of war; but killing even an alien enemy within the kingdom, unless in the actual exercise of war, would be murder.—4. And lastly, the killing must be committed with malice aforethought. Malice is either express or implied. Express malice is when one, with a sedate and deliberate mind, and formed design, doth kill another; which formed design is evidenced by external circumstances discovering that inward intention; as, lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm. Neither shall he be guilty of a less crime, who kills another in consequence of such a wilful act as shews him to be an enemy to mankind in general; as, going deliberately with a horse used to strike, or discharging a gun, among a multitude of people. So, if a man resolve to kill the next person he meets, and do kill him, it is murder, although he knew him not; for it is universal malice. And it may be necessary here to observe, that no provocation, however great will extenuate or justify a homicide, where there is evidence of express malice. So, where A and B having fallen out, A said he would not strike, but would give B a pot of ale to strike him; upon which B did strike, and A thereupon killed him; this was holden to be murder. And in many cases where no malice is expressed or openly indicated, the law will imply it. Thus, where a man wilfully poisons another; in such a deliberate act the law presumes malice, though no particular enmity can be proved. So, if a man kill another suddenly without any, or without a considerable, provocation; if he kill an officer of justice in the legal execution of his duty; or if, intending to do another felony, he undesignedly kill a man: in all these cases the law implies malice, and the offence is murder.—If two persons mutually agree to commit suicide together, and accordingly take poison or attempt to drown themselves together, but one only of them dies, the survivor is guilty of murder.—As there are many very nice distinctions, however, upon this subject of malice prepense, express, and implied, it may be desirable to consider the subject more fully and minutely, which we shall do under the following heads:

Killing by poison. Of all the forms of death, by which human nature may be overcome, the most detestable is that of poison; because it can of all others be the least prevented either by manhood or forethought. And therefore in all cases where a man wilfully administers poison to another, or lays poison for him, and either he or another takes it, and is killed by it, the law implies malice, although no particular enmity can be proved. If however, it were administered by mistake, or if it were laid with an innocent intention in the place from which the deceased took it, it is merely homicide by misadventure. So, if a physician or surgeon give his patient a potion or plaster to cure him, which contrary to expectation kills him, this also is neither murder nor manslaughter, but misadventure.

Killing by fighting. Killing by fighting may be either murder, or manslaughter, or homicide *se defendendo*, according to circumstances. 1. If two persons quarrel and afterwards fight, and one of them kill the other,—in such a case, if there intervened, between the quarrel and the fight, a sufficient cooling time for passion to subside and reason to interpose, the killing would be murder; but if such a time had not intervened, if the parties, in their passion, fought immediately, or even if immediately upon the quarrel they went out and fought in a field (for this is deemed a continued act of passion), the killing in such a case would be manslaughter only, whether the party

proceedings. If the law officer declares the prisoner to be not guilty, the judge is to pass an immediate sentence of acquittal, and to order him to be discharged; unless he sees cause to disapprove such opinion, in which case he is to refer the proceedings on the trial for the sentence of the nizamut adawlut. If the answer of the law officer declares the prisoner to

If the law officer acquits.

If he convicts of wilful murder, whe-

killing struck the first blow or not. Therefore if two persons deliberately fight a duel, and one of them be killed, the other and his second are guilty of murder; no matter how grievous the provocation, or by which party it was given. The second of the deceased, also, is deemed guilty of murder, as being present, aiding, and abetting; although Lord Hale seems to think the rule of law, as to principals in the second degree, too far strained in that case.—And even in the case of a sudden quarrel, where the parties immediately fight, the case may be attended with such circumstances as will indicate malice upon the part of the party killing; and the killing then would be murder, and not merely manslaughter. If, for instance, the party killing began the attack under circumstances of undue advantage,—as if A and B quarrel, and A draw his sword and make a pass at B, and B thereupon draw his sword, and they fight, and B is killed, A would be guilty of murder; for his making the pass before B had drawn his sword, shews that he sought his blood. So, where A and B quarrelled, and A threw a bottle at B, and then drew his sword, and B then threw the bottle back at A, and wounded him, upon which A immediately stabbed him: this was holden to be murder. But if the parties, at the commencement, attack each other upon equal terms, and afterwards, in the course of the fight, one of them in his passion snatch up a deadly weapon and kill the other with it; this would be manslaughter only.—So, if there be any other circumstances in the case indicative of malice in the party killing, it will be murder. As, for instance, if two persons fight upon a sudden quarrel, and be separated; and one of them afterwards, having provided himself with a deadly weapon, lies in wait for the other, to have an opportunity, thus armed, to renew the quarrel; and they accordingly meet, quarrel, and fight, and the man who is armed kills the other; this is murder. So, if two persons fight from malice, and pretend or feign a reconciliation, and they afterwards meet and suddenly fight upon the score of the old malice, and one of them be killed; this is murder, and not merely manslaughter. So, if B challenge A, and A refuse to meet him, but tell him that he shall be on his way to such a place upon business at such a time, and B meet him on his way and assault him, and they fight, and A kills B: if it appear that A made this communication for the purpose of evading the law, by giving the fight the appearance of a sudden quarrel, the killing would be murder; but, if the communication were made undesignedly, it would be manslaughter only.—Boxing and sword-playing are unlawful acts; therefore, if a player be killed, such killing is manslaughter. But all struggles in anger whether by fighting, wrestling, or in any other mode, are unlawful, and death occasioned by them is manslaughter at the least.—3. If two men fight upon a sudden quarrel, and one of them after a while endeavour to avoid any further struggle, and retreat as far as he can, until at length no means of escaping his assailant remain to him, and he then turn round and kill his assailant, in order to avoid destruction: this homicide is excusable as being committed in self-defence; and, malice apart, it is little matter, in such a case, which struck the first blow at the beginning of the contest. And the same, of course, where one man attacks another, and the latter, without fighting, flies, and then turns round and kills his assailant, as above mentioned. But in either of these cases, to shew that it was homicide *se defendendo*, it must appear that the party killing had retreated, either as far as he could, by reason of some wall, ditch, or other impediment, or as far as the fierceness of the assault would permit him; for the assault may have been so fierce as not to allow him to yield a step, without manifest danger of his life, or enormous bodily harm; and then in his defence, if there be no other way of saving his own life, he may kill his assailant instantly. The distinction between this kind of homicide and manslaughter, is, that here the slayer could not otherwise escape, although he would; in manslaughter he would not escape if he could.—And as the manner of the defence, so is also the time, to be considered; for if the person assaulted do not fall upon the aggressor until the affray is over, or when he is running away, that is revenge, and not defence. Neither, under the cover of self-defence, will the law permit a man to screen himself from the guilt of deliberate murder: for if A and B agree to fight a duel, and A give the first onset, and B retreat as far as he safely can, and then kill A, this is murder, because of the previous malice and concerted design.—Under this excuse of self-defence, the principal civil and natural relations are comprehended; therefore, master and servant, parent and child, husband and wife, killing an assailant in the necessary defence of each other respectively, are excused; the act of the relation assisting, being construed the same as the act of the party himself.—There is one species of homicide *se defendendo*, where the party slain is equally innocent as he who occasions his death: as, for instance, that case mentioned by Lord Bacon, where two persons, being shipwrecked, have got on the same plank, but, finding it

ther he declares the prisoner liable to capital punishment, or not, the trial is to be referred.

be convicted of wilful murder *(kutl-amd)*, the judge, without making any reference to the heir or heirs of the slain, is to require the law officer to declare the punishment to which the prisoner convicted would be liable according to the Mahomedan law, supposing all the heirs of the slain entitled to prosecute the prisoner for kisas to have attended and prose-

not able to save them both, one of them thrusts the other from it, and he is drowned: this homicide is excusable through unavoidable necessity, and upon the principle of self-defence.—4. If, when two persons are fighting, a third come up, and take the part of one of them, and kill the other: this will be manslaughter in the third party; and murder or manslaughter in the person whom he assisted, according as the fight was deliberate and premeditated, or upon a sudden quarrel. If the fighting, however, were deliberate, or otherwise of malice, and the third party, when he interfered, knew it to be so, the killing would be murder, both in the party who thus interfered, and in the person whom he assisted. If, on the other hand, the third party, who thus interferes, be killed, it is but manslaughter.

Killing upon provocation. No provocation whatever can render a homicide justifiable, or even excusable; the least it can amount to is manslaughter. If a man kill another suddenly, without any, or without a considerable, provocation, the law implies malice, and the homicide is murder; but if the provocation were great, and such as must have greatly provoked him, the killing is manslaughter only. In considering, however, whether the killing upon provocation amount to murder or manslaughter, the instrument wherewith the homicide was effected must also be taken into consideration: for if it were effected with a deadly weapon, the provocation must be great indeed to extenuate the offence to manslaughter: if with a weapon or other means not likely or intended to produce death, a less degree of provocation will be sufficient; in fact, the mode of resentment must bear a reasonable proportion to the provocation, to reduce the offence to manslaughter. Where some provoking words being used by a soldier to a woman, she gave him a box on the ear; and the soldier immediately gave her a blow with the pomel of his sword on the breast, and then ran after her, and stabbed her in the back; this was at first deemed murder; but it appearing afterwards that the blow given to the soldier was with an iron patten, and that it drew a great deal of blood, the offence was holden to be manslaughter only. Where two soldiers demanded to be admitted to a public-house to drink, and the landlord refused, because it was after eleven o'clock at night; one of them, however, upon the door being afterwards opened to let out company, rushed in; and whilst the landlord was struggling to get him out, the other soldier struck the landlord on the head with a sharp instrument, and killed him; this was holden to be murder, notwithstanding the struggle with the other soldier; besides the landlord had a right to put him out of his house. So, in all other cases, where upon a sudden provocation one beats another in a cruel and unusual manner, so that he dies, it is murder. An unwarrantable imprisonment of a man's person, however, has been holden sufficient provocation to make a killing, even with a sword, manslaughter only. Where A to prevent B from fighting with his brother, laid hold of him and held him down, but struck no blow, upon which B stabbed A; it was holden that if A did nothing more than was necessary to prevent B from beating his brother, and had died of the stab, the offence of B would have been murder; but that if A did more than was necessary to prevent the beating of his brother, it would have been manslaughter only. So, if a man pull another's nose, or offer him any other great personal indignity, and the other thereupon immediately kill him, it is manslaughter only. Or if a man take another in adultery with his wife, and kill him directly upon the spot, this is manslaughter merely. So, if a father see another person in the act of committing an unnatural crime with his son, and instantly kill him, it is manslaughter only; but if, hearing of it, he go in quest of the party, and kill him, it is murder. Where a boy, after fighting with another, ran home bleeding to his father; and the father immediately took a small cudgel, and ran three-quarters of a mile to the place where the other boy was, and struck him a single blow with the stick, of which blow the boy afterwards died: this was holden to be manslaughter only. Where a mob threw a pickpocket into a pond, for the purpose of ducking him, but he was unfortunately drowned: this was holden to be manslaughter. But it may safely be laid down as a general rule, that no words or gestures, however opprobrious or provoking, will be considered in law to be provocation sufficient to reduce homicide to manslaughter, if the killing be effected with a deadly weapon, or an intention to do the deceased some grievous bodily harm be otherwise manifested; but if effected with a blow of a fist, or with a stick, or other weapon not likely to kill, it is manslaughter only. And if there be a provocation by blows, which are not sufficiently violent in themselves to reduce the killing below the crime of murder, yet if they be accompanied by very aggravated words and gestures, this may make it manslaughter only.—But in all cases, to reduce a homicide upon provocation to manslaughter, it is essential that the battery or wounding, &c., appear to have been inflicted immediately upon

cuted him, at an age competent to demand kisas, and to have demanded kisas. The futwa of the law officer upon this reference is also to be subscribed on the record of the court's proceedings; and whether the futwa declare the prisoner liable to suffer death, as must be the case in most instances of conviction of wilful murder under the supposed

the provocation being given; for if there be a sufficient cooling time for passion to subside and reason to interpose, and the person so provoked afterwards kills the other, this is deliberate revenge, and not heat of blood, and accordingly amounts to murder. So, if there be evidence of express malice, the killing will be murder, however great the provocation.

Killing by correction. Where a parent is moderately correcting his child, a master his servant or scholar, or an officer punishing a criminal, and he happens to occasion his death, it is only misadventure; but if he exceed the bounds of moderation, either in the manner, the instrument, or the quantity of punishment, and death ensue, it is manslaughter at the least, and in some cases (according to the circumstances) murder. Where a master corrected his servant with an iron bar, and a schoolmaster stamped on his scholar's belly, so that each of the sufferers died: these were justly holden to be murders; because the correction being excessive, and such as could not proceed but from a bad heart, it was equivalent to a deliberate act of killing. So, in all other cases where the correction is inflicted with a deadly weapon, and the party dies of it, it will be murder; if with an instrument not likely to kill, though improper for the purpose of correction, it will be manslaughter. Where a master struck his servant with one of his clogs, because he had not cleaned them, and death unfortunately ensued; it was holden to be manslaughter only, because the clog was very unlikely to cause death, and the master consequently could not have the intention of taking away the servant's life by hitting him with it.

Killing in defence of property, &c. If any person attempt to rob or murder another in or near the highway, or in a dwelling house, or attempt burglariously to break any dwelling house in the night time, and be killed in the attempt, the slayer shall be acquitted and discharged; for the homicide is justifiable, and the killing is without felony. And the same, where a man is killed in attempting to burn a house; or where a woman kills a man who attempts to ravish her; or where a man is killed in attempting to break open a house in the day-time with intent to rob, or to commit any other forcible and atrocious crime. And not only the party whose person or property is thus attacked, but his servants, and other members of his family, and even strangers who are present at the time, are equally justified in killing the assailant. The above rule, however, does not extend to felonies without force, such as picking pockets, nor to misdemeanors of any kind; and even in cases within the rule, it must be proved that the intent to commit such forcible and atrocious crime was clearly manifested by the felon, otherwise the homicide will be manslaughter at least, if not murder. But, in cases within the rule, it may be necessary to observe, that the party whose person or property is attacked, is not obliged to retreat, as in other cases of self-defence, but may even pursue the assailant until he find himself or his property out of danger.—What we have now said, relates to felonies by force. In the case of forcible misdemeanors, such as trespass in taking goods, although the owner may justify beating the trespasser, in order to make him desist, yet if he kill him it will be manslaughter: or if, instead of beating him, he attack him with a deadly weapon, it would perhaps be murder, particularly if the wound were given after the party had desisted from the trespass. But, in defence of a man's house, the owner or his family may kill a trespasser who would forcibly dispossess him of it, in the same manner as he might by law kill in self-defence a man who attacked him personally; with this distinction, however, that in defending his house he need not retreat, as in other cases of *se defendendo*, for that would be giving up his house to his adversary. As to personal assaults, where the party assaulted kills his adversary, we have already considered them under the foregoing heads.

Killing without intention, whilst doing another act. If a person, whilst doing or attempting to do another act, undesignedly kill a man,—if the act intended or attempted were a felony, the killing is murder; if unlawful, (*malum in se*) but not amounting to felony, the killing is manslaughter: if lawful (that is, not being *malum in se*), homicide by misadventure merely. If a man deliberately shoot at A, and miss him, but kill B, this is murder. So, if he strike at A, and by accident strike and kill B, it is murder. If a man lay poison for A, and B (against whom he had no malicious intent) take it, and it kill him, this is likewise murder. So, if whilst two men are deliberately fighting, a third go between them to part them, and be killed by one of them: it is murder, whether he were killed accidentally or designedly. If a man shoot at another's poultry, with intent to steal them, and by accident kill a man, it is murder; if without such intention, it is manslaughter; the act of shooting at the poultry being unlawful, but not felonious. If a man throw a stone at a horse, and it hit the rider and kill him, it is manslaughter. If, when engaged in an unlawful or dangerous sport, a man kill another by accident, it is manslaughter;

demand of kisas by the heirs of the slain; or whether it declare the prisoner not liable to capital punishment from the heirs of the slain not being legally entitled to demand kisas, or the failure of retaliation from the parties standing in the relation of parent and child, or master and slave, or otherwise; the judge is in either case to refer the proceedings for the sentence of the nizamut adawlut. Should the answer of the law officer to the first reference acquit the prisoner of wilful murder, but convict him of homicide of any one of

If the law officer convicts of homicide

if the sport were lawful and not dangerous, it would be homicide by misadventure merely. So, if a man, intending to kill a person attempting to commit a forcible and atrocious crime against his person or property, by mistake, kill one of his own family, it is homicide by misadventure merely. Where a man is at work with a hatchet, and the head of it flies off and kills a bystander, this is homicide by misadventure. So, if a man, shooting at game, by accident kill another, it is homicide by misadventure merely, even although the party be unqualified; for the use of fire-arms by an unqualified person is merely a prohibited act, and not *malum in se.*—There are two seeming exceptions, however, to the above rule. *First.* If two persons be fighting, under such circumstances that if one were killed it would be manslaughter only in the other; if, in such a case, an innocent party be unintentionally killed by one of them, it is manslaughter only. This, perhaps, is not strictly an exception; for the act in which the parties are engaged, namely, the fighting, is not in itself felonious, although the result of it may be so. *Secondly.* Where an act, in itself lawful, is at the same time dangerous;—in order to render an unintentional homicide from it excusable, it must appear that the party, whilst doing the act, used such a degree of caution as to make it improbable that any danger or injury should arise from it to others: if not, the homicide will be manslaughter at the least. For instance, if a workman throw stones or rubbish, &c., from a house, and thereby kill a person passing underneath, it is murder, manslaughter, or homicide by misadventure, according to the degree of precaution taken by him that no person should be injured by them, and of the necessity of such precaution. If he did it without previously warning the persons beneath, and at a time when it was likely that persons were passing, it would be murder; if at a time when it was not likely that any persons were passing, it would be manslaughter; if in a retired place, where no persons were in the habit of passing, or likely to pass, it would be misadventure merely. But if he previously gave warning to the persons beneath,—then, if it happened in a country village where few persons pass, it is misadventure only; if in London or other populous town at a time when the streets are full, it would be manslaughter.—If a man, breaking an unruly or vicious horse, ride him amongst a crowd, and the horse kick a man and kill him: this is murder, if the rider brought the horse into the crowd with an intent to do mischief, or even to divert himself by frightening the crowd; manslaughter, if done heedlessly and incautiously only.—If a man, driving a cart or other carriage, drive it over another man and kill him; if he saw or had timely notice of the probable mischief, and yet drove on, it would be murder; if he purposely drove it furiously in amongst a crowd, it would probably be murder; *semb.* if in a street where persons were much in the habit of passing, it would be manslaughter; if in a place where people did not usually pass, misadventure merely, provided he took that care which persons in similar situations are accustomed to do. If the driver of a carriage race with another carriage, and urge his horses to so rapid a pace that he cannot control them, it is manslaughter, if in consequence the carriage upset and a passenger be killed.—Where a man lays poison to kill rats, and another man takes it, and it kills him; if the poison were laid in such a manner or place as to be mistaken for food, it is, perhaps, manslaughter; if otherwise, misadventure only.—If a man discharge a loaded gun amongst a multitude of people, and death ensue, it is murder; for the law in such a case will imply malice. If he discharge it, merely for the purpose of unloading it, or the like, and death ensue; then, if it were in a place where persons were likely to pass, it is manslaughter; otherwise, misadventure only. Where a man gave a loaded gun to his servant, to protect a corn-field from deer during the night, with instructions to fire when he heard any bustle in the corn by the deer; and the master himself unfortunately rushed into the corn during the night, and the servant, imagining it to be the deer, fired, and shot his master: this was holden to be misadventure. Where a man, finding a pistol in the street, brought it home, and imagining (from having tried it with the rammer) that it was not loaded, presented it in sport at his wife, drew the trigger, and killed her: this was holden to be manslaughter; but Mr. Justice Foster doubts the propriety of the decision, as the defendant took the usual precaution to ascertain that the pistol was not loaded; and clearly, if he took not this or other reasonable precaution, it would be manslaughter. If a man, shooting at butts or a target, by accident kill a bystander, it is misadventure, but this must be understood of cases where a proper precaution to prevent accidents has been taken; for if the target, &c. be placed near a highway or path, where persons are in the habit of passing, the killing would probably be

the four denominations distinguished in the Mahomedan law (viz. *shibah-amd, kutl-khota, kutl-hayeem-mokam-ba-khota,* and *kutl-ba-subbub*), the law officer is to declare the prescribed penalty for the same according to the Mahomedan law; and if his futwa should declare the deyut or price of blood to be the whole or part of the legal punishment, the sessions court is to commute the fine to imprisonment [*v. infra*]; and its sentences in such instances, as in all others according to the existing regulations, are to be carried into

of any one of the four denominations distinguished in the Mahomedan law.

deemed manslaughter.—So, if a man, knowing that people are passing along a street, wantonly throw a stone or shoot an arrow into it, likely to do an injury, with an intent to hurt some of the persons passing, and a person be killed by it, it is murder, although the stone or arrow was not intended to hit any particular person; but if it were done thoughtlessly and incautiously, and without intent to hurt any one,—then, if it were thrown or shot into a place where people were in the habit of passing, the killing is manslaughter; if into a place where persons were not likely to pass, misadventure only.

Killing officers of justice. If a man kill an officer of justice, either civil or criminal, such as a bailiff, constable, watchman, &c., in the legal execution of his duty, or any person acting in aid of him (whether specially called thereunto or not) or any private person endeavouring to suppress an affray, or apprehend a felon, knowing his authority, or the intention with which he interposes; the law will imply malice, and the offender will be guilty of murder. And the officer and persons acting in aid of him enjoy this privilege and protection, *eundo, morando, et redeundo*: therefore, if an officer, on his way to do his duty, be opposed and killed, it is murder; or if he arrive at the place, and in consequence of opposition retreat, and on his retreat be killed, it is murder. Three things are to be attended to, in matters of this kind: the legality of the deceased's authority, the legality of the manner in which he executed it, and the defendant's knowledge of that authority; for if an officer be killed in attempting to execute a writ or warrant invalid on the face of it, or against a wrong person, or out of the district in which alone it could legally be executed; or if a private person interfere and act in a case where he has no authority by law to do so; or if the defendant had no knowledge of the officer's business, or of the intention with which a private person interferes, and the officer or private person be resisted and killed: the killing will be manslaughter only.—1. As to the legality of the authority: If an officer, having a warrant from a proper magistrate to apprehend B for felony; or if B be indicted for felony; or if the hue and cry be levied against B: in these cases, if B or any of his accomplices kill the officer or any person joining in the hue and cry, it is murder, whether B be guilty or innocent of the felony charged against him. But if the warrant were illegal and void upon the face of it; or issued with a blank in it, and the blank afterwards filled up; or attempted to be executed against C instead of B; the killing would be manslaughter only. If a writ of execution in civil cases be correct upon the face of it, although the judgment be erroneous, or the proceedings irregular, if the officer, in endeavouring to execute it, be resisted and killed, it is murder; but if the writ were a nullity on the face of it, or if the warrant upon it were attempted to be executed by any other than the officer to whom it was directed (the officer himself not being present, or, at least, acting in the arrest) the killing would be manslaughter only. If an innocent person be indicted for a felony, and an attempt be made to arrest him for it without warrant, and he resist and kill the party attempting to arrest him: if the party attempting the arrest were a constable, the killing is murder; if a private person, manslaughter; because the constable has authority by law to arrest in such a case; a private person has not. And the same in all cases where a person is arrested or attempted to be arrested upon a reasonable suspicion of felony. But if a man actually commit a felony, and another, in whose presence he committed it, attempt to arrest him for it, and be resisted and killed; or if a person, present at an affray, interfere for the purpose of restraining the offenders and keeping the peace, and be killed; or if a person, present when another attempts to commit a treason or felony, lay hold of him in order to prevent him, and be killed: the killing in these cases would be murder, whether the person arresting or interfering, &c. be a constable or not; for either has power to arrest or interfere, &c. in such a case.—2. As to the legality of the manner in which the authority is exercised: If the constable of the vill of A, attempt without warrant to suppress a tumult in the vill of B, and be resisted and killed, it is manslaughter only; for he had authority, in such a case, within the vill of A alone. So, if a sheriff's officer attempt to execute a writ out of the proper county, and be resisted and killed, it is manslaughter only. But constables and other peace officers may execute warrants out of their respective precincts, provided the place where the warrant is executed be within the jurisdiction of the magistrate granting or backing the warrant.—3. As to the defendant's knowledge of the deceased's authority or intention: When any officer is in the legal execution of his duty, or a private person endeavouring to suppress an affray, or apprehend a felon, and

execution without reference to the nizamut adawlut, if for temporary imprisonment; or referred to that court if for imprisonment for life; subject to the general provision* for referring to the nizamut adawlut all trials wherein the sessions courts disapprove of the futwas of their law officers. *Beng.* and *Ben.* Reg. IV. 1797, sect. 3. *Ced. Prov.* Reg. VII. 1803, sect. 15, cl. 2.

* *v. para.* 862.

is resisted and killed: if it appear that the slayer knew the officer's business or the intent of the private person, either expressly from the deceased, or impliedly from circumstances, the killing is murder; if it appear that he was ignorant in this respect, it is manslaughter only. Where a bailiff rushed into a gentleman's bed-chamber early in the morning, without giving the slightest intimation of his business, and the gentleman, not knowing him, in the impulse of the moment wounded him with his sword, and killed him: this was holden to be manslaughter. But where the bailiff or constable shews the warrant, or where it appears that he is known to the defendant to be an officer, as for instance, when the defendant said, "Stand off, I know you well enough, come at your peril," if after this the officer be killed, it will be murder. If the constable interfere to prevent an affray within his own vill, if he be killed by one of the inhabitants, or other person, who knows him to be the constable, it will be murder; if by a stranger who does not know him, it is manslaughter. So, if one of several know him to be a constable, it will be murder in him, manslaughter in the rest. If a constable command the peace, or shew his staff of office, this it seems is a sufficient intimation of his authority. And in such a case it is not necessary to prove the deceased's appointment as constable; proof that he was accustomed to act as constable, is sufficient. But private persons, when they interfere, must expressly intimate their intention, otherwise killing them will be manslaughter only. In all the cases, however, above stated to be manslaughter only, if there be evidence of express malice in the party killing, the homicide will be murder.

Killing by officers. Where an officer of justice, in endeavouring to execute his duty, kills a man; this is justifiable homicide, or manslaughter, or murder, according to circumstances. 1. Where an officer of justice is resisted in the legal execution of his duty, he may repel force by force; and if in doing so he kill the party resisting him, it is justifiable homicide; and this in civil as well as in criminal cases. And the same as to persons acting in aid of such officer. Thus, if a peace officer have a legal warrant against B for felony, or if B stand indicted for felony, or if hue and cry be levied against B: in these cases, if B resist, and in the struggle be killed by the officer, or any person acting in aid of him, or joining in the hue and cry, the killing is justifiable. So, if a private person attempt to arrest one who commits a felony in his presence, or interfere to suppress an affray, and be resisted, and kill the person resisting, this is also justifiable homicide. And this, not merely on the principle of self-defence, for the officer or private person is not bound to retreat, as in the case of homicide *se defendendo*, but upon that principle, and the necessity of executing the duty the law has imposed upon him, jointly. Still there must be an apparent necessity for the killing; for if the officer were to kill after the resistance had ceased, or if there were no reasonable necessity for the violence used upon the part of the officer, &c., the killing would be manslaughter at the least. Also, in order to justify an officer or private person in these cases, it is necessary that they should, at the time, be in the act of legally executing a duty imposed upon them by law, and under such circumstances, that, if the officer or private person were killed, it would have been murder; for if the circumstances of the case were such, that it would have been manslaughter only to kill the officer or private person, it will be manslaughter at least in the officer or private person to kill the party resisting.—2. If the prisoners in a jail, or going to jail, assault the jailor, or officer, and he in his defence kill any of them, it is justifiable, for the sake of preventing an escape.—3. Where an officer or private person, having legal authority to apprehend a man, attempts to do so, and the man, instead of resisting, flies, or resists and then flies, and is killed by the officer or private person in the pursuit: if the offence with which the man was charged were a treason or felony, or a dangerous wound given, and he could not otherwise be apprehended, the homicide is justifiable: but if charged with a breach of the peace, or other misdemeanor merely; or if the arrest were intended in a civil suit; the killing in such cases would be murder,—unless, indeed, the homicide were occasioned by means not likely or intended to kill, such as tripping up his heels, giving him a blow of an ordinary cudgel or other weapon not likely to kill, or the like, in which case the homicide at most would be manslaughter only.—4. In a case of a riot or rebellious assembly, the officers endeavouring to disperse the mob are justifiable in killing them, if the riot cannot otherwise be suppressed.—5. Where a criminal is executed by the proper officer, in pursuance of his sentence, this is justifiable homicide. But if it be done by any other person, or not done in strict conformity with the sentence, as, for instance, if an officer behead one who is adjudged to be hanged, or the contrary, it is murder. *Archbold.*

2869. A doubt having been entertained whether the above provisions relative to culpable homicide, not amounting to wilful murder, empower the sessions courts to commute the deyut, or fine of blood, prescribed by the Mahomedan law in such cases, to any period of temporary imprisonment, or whether the discretion of such courts, in the cases referred to, is limited by the general rule contained in cl. 7, sect. 2, Reg. LIII. 1803, which restricts the sessions courts, in cases not specifically provided for, from passing a final sentence exceeding corporal punishment and imprisonment with hard labor for the term of seven years:—it is hereby explained that the above restriction is applicable to all cases of commutation for deyut on a conviction before a sessions court of culpable homicide, not amounting to wilful murder, under the above provisions, or any other regulation in force. If in any instance the above stated punishment appears insufficient, the judge is to refer the trial to the nizamut adawlut. Reg. XVII. 1817, sect. 7.

The punishment of deyut is commutable by the sessions courts to imprisonment with hard labor for any term not exceeding seven years;

2870. The above provision does not authorize the infliction of corporal punishment in cases of culpable homicide [consequently no additional period of imprisonment can be given in lieu thereof under sect. 2, Reg. II. 1834]. C. O. No. 293 of vol. 1. Const. No. 352.

but corporal punishment cannot be adjudged in such cases.

2871. In trials for murder in the sessions courts, an additional question is to be put to the law officer, whether the crime of wilful murder is proved against the prisoner or prisoners or any of them; and the law officer is to subscribe a distinct concise answer, that it is proved or that it is not proved; after which he is to be called on for his general futwa in the case. C. O. No. 228 of vol. 1.

Rule for taking the futwa of the law officer.

2872. In all cases referred under the above provisions to the nizamut adawlut, the law officers of that court, provided they are of opinion that the prisoner is duly convicted of murder, are to write their futwa† upon the case referred to the law officer of the sessions court; assuming always that all the heirs of the slain entitled to prosecute for kisas attended and prosecuted, at an age which rendered them competent to demand kisas, and that they demanded it. But if they are of opinion that the prisoner is not duly convicted of wilful murder, they are to state their reasons for such opinion; and whether they consider the prisoner altogether innocent, or convicted of homicide under any of the four denominations distinguished by the Mahomedan law, adding in the latter case the legal penalty to which the prisoner is liable: and the nizamut adawlut, after considering their futwa so given, with the whole of the proceedings on the case, are either to require further evidence, if they see occasion, or to pass such final sentence as appears consonant to justice, and conformable to the Mahomedan law with the exceptions and modifications authorized by the regulations. If, in any case not provided for by the regulations, the Mahomedan law appears to the court repugnant to natural justice, they are notwithstanding to adhere thereto, if in favor of the prisoner, in the case before them; or if against the prisoner to grant such remission or mitigation of punishment, as appears just and proper according to the circumstances of the case*; and at the same time to propose a new regulation to provide against a recurrence of the case. *Beng. and Ben.* Reg. IV. 1797, sect. 4. *Ced. Prov.* Reg. VIII. 1803, sect. 11.

How the law officers of the nizamut adawlut are to deliver their futwa.

† *For cases in which futwa is not required, see para.* 990.

The nizamut adawlut are to call for further evidence, or to pass final sentence.

How far the Mahomedan law is to be adhered to.

* *v. para.* 1013.

The intention of the criminal, and not the manner or instrument of perpetration (except as evidence of the intent) is to be the rule for determining the punishment.

Wilful homicide by poison or by drowning is included in the above rule.

† *v. para.* 1013.

2873. In trials for murder, the law officers are to deliver their futwas according to the doctrines of Yoosuf and Mahomed. The distinctions, however, made by those Imams, and by Huneefah, as to the mode of committing murder are not to be adhered to by the nizamut adawlut; but the intention of the criminal, either evidently or fairly inferrible from the nature and circumstances of the case, and not the manner or instrument of perpetration (except as evidence of the intent), is to constitute the rule for determining the punishment. It is further declared that wilful homicide by poison, or by drowning, when the intention of poisoning or drowning is evident, is included in the above rule; and that in all such cases the nizamut adawlut (whatever may be the futwa of their law officers) are to sentence the prisoner to suffer death, provided they judge him fully convicted of wilful murder, or unless they consider him a proper object for mercy.† *Beng. and Ben.* Reg. IX. 1793, sect. 75; and Reg. VIII. 1799, sect. 5. *Ced. Prov.* Reg. VIII. 1803, sect. 10, cl. 1.

Erroneous homicide.

How the courts are to proceed in such cases.

‡ *v. para.* 1013.

2874. Any person who is convicted of having deliberately and maliciously intended to murder one individual, and of having in the prosecution of such intention accidentally killed another individual, is on account of the murderous intention and actual homicide liable to the punishment of murder, in like manner as if he had killed the person intended to be murdered; any distinction in the Mahomedan law to the contrary notwithstanding. In such cases the law officers of the sessions court, and of the nizamut adawlut (to which court all trials of this description are to be referred), are to be required to state what punishment the prisoner would have been liable to, if he had committed the murder intended by him; and if their futwa declares him in such case liable to suffer death, or if under the futwa so given, and the modifications of the Mahomedan law contained in the above provisions or any other regulation, the prisoner is liable to suffer death; the nizamut adawlut, provided it is established to their satisfaction that the prisoner intended to commit the crime of deliberate and malicious murder, and that the homicide charged against him was actually committed by him in the prosecution of such murderous intention, are to sentence the prisoner to suffer death, unless they consider him a proper object of mercy, and deserving of pardon or a mitigation of punishment.‡ *Beng. and Ben.* Reg. VIII. 1801, sect. 2. *Ced. Prov.* Reg. VIII. 1803, sect. 10, cl. 2.

The foregoing rule is applicable to all cases of accidental homicide, wherein the criminal intention of the party, if carried into execution, would subject him to a sentence of death.

2875. The rule contained in the preceding clause is to be considered equally applicable to any other cases of homicide, which are declared by the law officers of the sessions court, or nizamut adawlut, to be within the Mahomedan law of kutl-khota, kutl-kayeem-mokam-ba-khota, or other legal denominations of accidental homicide; but in which the prisoner is clearly convicted of having committed the homicide proved against him with a murderous intention, such as if carried into effect would have subjected him to a sentence of death; or with a deliberate intention to commit any crime, which if committed in pursuance of the prisoner's criminal design would have rendered him liable to a sentence of death. *Beng. and Ben.* Reg. VIII. 1801, sect. 3. *Ced. Prov.* Reg. VIII. 1803, sect. 10, cl. 3.

The rule for commutation of deyut is

2876. Such part of sect. 3, Reg. IV. 1797 [para. 2868], as authorizes the sessions court, in cases of kutl-khota, and other cases of accidental homicide, when the prisoner is

declared liable to the deyut, or price of blood, to commute such price to imprisonment, is not to be considered applicable to any of the cases noticed in the two preceding paragraphs. A prisoner is not liable to suffer any imprisonment, or other punishment, in the cases of accidental homicide mentioned in the section above-quoted, although the deyut is declared by the law officers to be payable under the Mahomedan law, if the homicide clearly appears to have been committed by misadventure in the prosecution of a lawful act and without any malignant intention. *Beng. and Ben.* Reg. VIII. 1801, sect. 6. *Ced. Prov.* Reg. VIII. 1803, sect. 10, cl. 6.

not applicable to such cases.

Homicide by misadventure in the prosecution of a lawful act and without malignant intention subjects to no punishment.

2877. The magistrate is authorized to release the accused, if the homicide, in which he appears to have been concerned, is clearly shown, from the whole of the evidence, to have been accidental, or justifiable under the Mahomedan law and the regulations. Reg. IX. 1807, sect. 9, cl. 1.

The magistrate may release the accused in cases of accidental or justifiable homicide;

2878. In such case, if the magistrate is doubtful as to the law, he should apply to the law officer for assistance. Const. No. 617.

and should apply to the law officer, if in doubt as to the law.

2879. Persons who wound or slay murderers, robbers, or thieves, in their own defence, or in defence of their property, are not to be proceeded against, or placed in restraint, or required to give bail, except under special orders of the magistrate; police officers are strictly prohibited from acting in violation of the rule, under penalty of dismission from office. Reg. XX. 1817, sect. 25, cl. 10.

Homicide of murderers, robbers, or thieves, in self-defence, or defence of property, is justifiable.

2880. If any police officer entrusted with or assisting in the execution of any legal warrant for the apprehension of a person charged with murder, robbery, or other heinous crime, or pursuing a robber or murderer immediately after the commission of the crime, or resisting him during his attempt to perpetrate the crime, wounds or slays the offender in endeavouring to apprehend him, such police officer is to be held guiltless of any criminal act. Reg. XX. 1817, sect. 26, cl. 14.

So, homicide of such persons by police officers, in certain cases.

2881. In every case of wilful murder, wherein the crime appears to the nizamut adawlut to have been fully established against the prisoner, but the futwa of the law officers of that court has declared the prisoner not liable under the Mahomedan law to suffer death by kisas, solely on the ground of the prisoner's being father or mother, grandfather or grandmother, or other ancestor of the slain, or of the heir of the slain, or one of the heirs of the slain being a child or grandchild or other descendant of the prisoner, or of the slain having been the slave of the prisoner, or of any other person, or a slave appropriated for the service of the public, or on any similar ground of personal distinction and exception from the general rules of natural justice; the nizamut adawlut (provided they see no alleviating circumstances in the case) are to sentence him to suffer death, as if the futwa of their law officers had declared him liable to kisas, or to suffer death by seasut, as authorized by the Mahomedan law in all cases of wilful muder under the discretion vested in the magistrate with regard to this principle of punishment for the ends of public justice. *Beng. and Ben.* Reg. VIII. 1799, sect. 2. *Ced. Prov.* Reg. VIII. 1803, sect. 15.

Regard is not to be had to the grounds of personal distinction and exception to the general rules of natural justice, held by the Mahomedan law.

2882. It does not justify any prisoner convicted of wilful homicide, that he or she was desired by the party slain to put him or her to death; and in the event of the prisoner

The desire of the party slain to be put

to death is no justification of wilful homicide:

being convicted of the fact to the satisfaction of the nizamut adawlut, and of their seeing no alleviating circumstances in the case, they are to sentence him or her to suffer death, whatever may be the futwa of their law officers under the Mahomedan law; which in this instance also, although it withholds kisas, gives a full latitude to the magistrate in the discretionary punishment of tazeer or seasut. *Beng. and Ben.* Reg. VIII. 1799, sect. 3. *Ced. Prov.* Reg. VIII. 1803, sect. 16.

e. g. assisting in the suicide of a leper.

2883. A Hindoo is liable to punishment for aiding and abetting in the suicide of a leper. Const. No. 985.

Duelling.

2884. By the Mahomedan law, homicide by duelling, though wilful, being authorized by mutual consent, does not subject the person committing it to the penalty of wilful murder. But provision is made for such cases, when the prisoner appears deserving of punishment, by the above rule. In the case of a fatal duel, the magistrate may commit all parties to take their trial for murder; and, to authorize the commitment, it is not necessary that a complaint should be made by a private prosecutor. In this case no punishment was awarded in addition to the imprisonment which the accused had suffered before they were brought to trial, as it appeared that the surviving principal had received gross insults from the deceased, and that the seconds had used every endeavour to effect an accommodation. N. A. R. vol. 1, page 277.

Regard is not to be had to the justificatory plea of fornication on the part of or with the mistress or relation of the accused.

2885. It having been found, that in certain cases of murder the justificatory plea, that the person murdered was the mistress or relation of the prisoner, and detected in criminal intercourse with another man, or that the murdered man was found in criminal intercourse with the prisoner's mistress or relation, or generally speaking detected in fornication, has been upheld by the law officers in bar of capital or discretionary punishment, and has been declared to subject such prisoner to deyut only,—it is hereby enacted, that the law officers of the nizamut adawlut are to be called on to declare in such cases what the futwa would have been, if such plea had not existed; and the judge or judges sitting on the trial are to pass sentence under the general regulations, and on consideration of all the circumstances of the case, the same as if no such plea had existed. Reg. IV. 1822, sect. 5.

Cases in which persons convicted of wilful murder are declared by the futwa not liable to suffer death on the ground of their accomplices being exempted from kisas.

Accomplices, not the principal perpetrators, are liable to suffer death.

2886. If the futwa of the law officers of the nizamut adawlut declare any person convicted of wilful murder not liable to suffer death, under the Mahomedan law, on the ground of one or more of his accomplices being exempted from kisas; under any of the circumstances recited above or on any similar ground of exemption; the nizamut adawlut are, notwithstanding such futwa, to sentence the prisoner to suffer death, if in their judgment he is fully convicted, and there appear no alleviating circumstances in the case. And wherever the accomplice in a wilful murder, though not the principal perpetrator of the murder, appears to the nizamut adawlut fully convicted and deserving of death, they are authorized, under the discretion given by the Mahomedan law in such cases, to sentence the prisoner to suffer death; whether the futwa of their law officers declare the same or otherwise. *Beng. and Ben.* Reg. VIII. 1799, sect. 4. *Ced. Prov.* Reg. VIII. 1803, sect. 17.

2887. No specific punishment has been prescribed by any regulation in force for the simple offence of administering poison with intent to murder, death not ensuing, the provisions of cl. 4, sect. 8, Reg. XVII. 1817 referring solely to the administering poison with intent to murder when accompanied by robbery, burglary, or theft, or attempt to commit the same. The first mentioned crime comes therefore under the general rule laid down in cl. 7, sect. 2, Reg. LIII. 1803, by which sessions courts are empowered to pass sentence not exceeding 7 years' imprisonment; [and to refer the trial to the nizamut adawlut, if, in any instance, they consider such degree of punishment insufficient.]* Const. No. 755.

Administering poison with intent to murder, death not ensuing.

* *v. paras.* 888 *and* 861.

Special cases.

2888. If any person or persons of the sutar caste, or of any other caste or persuasion within the British territories, puts any person to death on the ground of his or her being versed in or practising sorcery, such person or persons, on being convicted of the crime, are to be held guilty of murder, and are invariably to be punished accordingly: and if any persons actually form themselves into an assembly for the purpose of trying any man or woman on a charge of witchcraft, or any other charge, or cause such assemblies to be held; and any person or persons are in consequence put to death; they are to be considered to be principals or accomplices in the murder, and are to be dealt with accordingly. *Beng. and Ben.* Reg. IV. 1797, sect. 6. *Ced. Prov.* Reg. VII. 1803, sect. 34.

Punishment of persons putting others to death on the ground of sorcery.

Persons holding an assembly for the trial of any charge, and putting persons to death, are guilty of murder.

2889. A criminal and inhuman practice of sacrificing children, by exposing them to be drowned, or to be devoured by sharks, prevailed at the island of Saugor, and Bansbaryah, Chaugdah, and other places on the Ganges. At Saugor especially such sacrifices were made at fixed periods, namely, the day of full moon in November and in January, at which time also grown persons devoted themselves to a similar death. Children, thrown into the sea at Saugor, were not generally rescued, as was the custom at other places; but the sacrifice was on the contrary completely effected with circumstances of peculiar atrocity in some instances. This practice, represented to arise from superstitious vows, was not sanctioned by the Hindoo law, nor countenanced by the religious orders or by the people at large, nor was it at any time authorized by the Hindoo or Mahomedan governments of India. The persons concerned in the perpetration of such crimes would therefore be clearly liable to punishment; and the plea of custom would be inadmissible in excuse of the offence; but for the more effectual prevention of so inhuman a practice, the following provisions were enacted: — If any person or persons wilfully, and with the intention of taking away life, throw or cause to be thrown into the sea, or into the Ganges, or into any other river or water, any infant, or person not arrived at the age of maturity, with or without his or her consent, in consequence whereof such person so thrown into the water is drowned, or is destroyed by sharks or by alligators, or otherwise perishes; the person or persons so offending are to be held guilty of wilful murder, and on conviction are to be liable to the punishment of death; and all persons, aiding or abetting the commission of such act, are to be deemed accomplices in the murder, and are to be subject to punishment accordingly. The trials of prisoners convicted, as principals or accomplices, of the crimes specified in this section, are to be referred to the nizamut adawlut who are to pass sentence thereupon according to sect. 75, Reg. IX. 1793,* whatever may be the

Persons sacrificing infants, or persons not arrived at the age of maturity, by throwing them into the sea, or river, are to be held guilty of wilful murder, and are to be liable to sentence of death.

* *v. para.* 2873.

futwa of the law officers of that court; or to grant such remission or mitigation of punishment; as appears just and proper according to the circumstances of the case.* *Beng. and Ben.* Reg. VI. 1802, sects. 1 and 2.

* *v. para.* 1013.

If the infant, or other person, is rescued, the criminals are to be held guilty of a high misdemeanor.

2890. If a child, or any person not arrived at maturity, is thrown into water, as stated in the preceding section, and is rescued from destruction, or by any means escapes from it, the persons who have been active in exposing him or her to danger of life, and all aiders and abettors of such act, are to be held guilty of a high misdemeanor; and on conviction are to be liable to such punishment as the sessions courts, under the futwa of their law officers, judge adequate to the nature and circumstances of the case. *Beng. and Ben.* Reg. VI. 1802, sect. 3.

Magistrates to be vigilant to prevent these practices.

2891. The magistrates of districts, wherein the sacrifice of children has been practised, are required to be vigilant to prevent the continuance of the practice; and are to cause the provisions of this regulation to be from time to time proclaimed at the places, and in the season, where, and when, such sacrifices have been effected. *Beng. and Ben.* Reg. VI. 1802, sect. 4.

Punishment of rajkoomars causing their female infants to be starved to death.

2892. The magistrates were required to issue a proclamation throughout their respective jurisdictions, prohibiting the inhuman practice, then prevalent among the tribe of rajkoomars, of causing their female infants to be starved to death; and declaring that if any rajkoomar, after the publication of the proclamation, should designedly prove the cause of the death of his female child, by prohibiting its receiving nourishment, or in any other manner, such rajkoomar should be liable to be tried as for murder. In such cases, the magistrate, on receiving information thereof upon oath, or such other information or proof as he deems sufficient to render the charge highly probable, is to cause such rajkoomar to be apprehended; when, if it appears to the magistrate that the crime has been actually committed, and that there are grounds for suspecting* the prisoner to have been concerned in the perpetration of it, the magistrate is to cause him to be committed to prison to be tried before the sessions court; and is at the same time to take all other precautions, as usual, for securing the attendance of the original complainant or informant and of the witnesses; and the prisoner is to be tried as in other cases of murder. *Ben.* Reg. XXI. 1795, sect. 13. *Ced. Prov.* Reg. III. 1804, sect. 11.

* *v. para.* 643.

Punishment of persons putting their children to death in revenge for some insult or injury offered to them by another person.

2893. Several instances having occurred in which persons were convicted of putting their children to death from an impulse of passion, with the intention of revenging themselves for a real or supposed insult or injury, offered to them by another person, under an idea that the guilt of shedding the blood of the innocent victim would lie on the head of the person offering such insult or injury; proclamation was made, throughout the ceded provinces, declaring that any person who should be capitally convicted of putting to death his or her child or children, or of putting to death any other child or person, in consequence of a real or supposed insult or injury, would be invariably punished with death according to the provisions of the laws and regulations in the case. C. O. Nos. 42, and 55 of vol. 1.

Neglect of a child, causing its death, subjects to deyut.

2894. The death of a child occasioned by the negligence of the person in charge of it, subjects such person to the payment of deyut, as incurred by the commission of kutl-kayeem-mokam-ba-khota, or homicide by misadventure. N. A. R. vol. 1, page 382.

Brahmins.

Reasons for the enactment of the following rules.

2895. The reverence paid by the Hindoos to Brahmins, and the reputed inviolability of their persons, and the loss of or prejudice to caste that ensues from proving the cause of their death, have in some places in the province of Benares been converted by some of the more unlearned part of them into the means of setting the laws at defiance, from the dread and apprehensions of the persons of the Hindoo religion, to whose lot it must frequently fall to be employed in enforcing against such brahmins any process or demands on the part of government. The devices, occasionally put in practice under such circumstances by these brahmins, are lacerating their own bodies either more or less slightly with knives or razors; threatening to swallow, or sometimes actually swallowing poison, or some powder which they declare to be such; or constructing a circular enclosure called a koorh, in which they raise a pile of wood or of other combustibles, and betaking themselves to fasting, real or pretended, place within the area of the koorh an old woman, with a view to sacrifice her by setting fire to the koorh on the approach of any person to serve them with any process, or to exercise coercion over them on the part of government or its delegates. These brahmins likewise, in the event of their not obtaining relief within a given time, for any loss or disappointment that they may have justly or unjustly experienced, also occasionally bring out their women or children, and causing them to sit down in the view of the peon who is coming towards them on the part of government or its delegates, they brandish their swords, and threaten to behead or otherwise slay these females or children on the nearer approach of the peon; and there are instances, in which, from resentment at being subjected to arrest or coercion or other molestation, they have actually not only inflicted wounds on their own bodies, but put to death with their swords the females of their families, or their own female infants, or some aged female procured for the occasion. Nor are the women always unwilling victims; on the contrary, from the prejudices in which they are brought up, it is supposed that in general they consider it incumbent on them to acquiesce cheerfully in this species of self-devotement, either from motives of mistaken honor, or of resentment and revenge, believing that after death they shall become the tormentors of those who are the occasion of their being sacrificed.—In order to put a stop to these abuses, it is enacted, that upon information in writing being preferred to the magistrate against any brahmin or brahmins, for establishing a koorh, or for being prepared to maim, wound, or slaughter his women or children, or any or either of them, in the manner described above, or in any manner substantially similar thereto, on account of any subject of discontent, or any other account whatsoever; in such case, upon oath being made to the truth of the information, the magistrate is immediately to address to the said brahmin or brahmins a written notice in the vernacular, and under his official seal, which notice is to be served on him or them by such of their relations, friends, or connections, as the magistrate may think fit, and have an opportunity of employing for the purpose; and in default of such relations, friends, or connexions of the said brahmin or brahmins, the magistrate is to cause the notice to be served by a single peon of the same religion; and the notice is to require the said brahmin or brahmins to remove the koorh and the women and people that may be placed in it; or to desist from any preparation towards wounding or slaughtering the women or children, according as either or both of these facts are charged in the information. The notice is also to contain a positive and encouraging

If a brahmin establish a koorh, or make preparations to maim, wound, or slaughter his women or children, a written notice is to be served on him by means of his relations, or by a single peon of the same religion.

assurance to the brahmin or brahmins in question, that on his or their complying with the principal exigence thereof, by removing the koorh and the person or persons therein, or by desisting from any preparation to wound or slaughter the women and children, and thereon repairing (as they may think fit) in person or by vakeel to the civil court, proper enquiry shall be made concerning the dispute that may have given occasion to the act or acts thus prohibited. But if the issuing of the notice has not the effect of inducing the said brahmin or brahmins to comply with the exigence thereof, a written return to that purpose is to be made and attested by the party or parties entrusted with the serving of it; and the magistrate is thereon to issue a warrant under his official seal and signature for the apprehension of the said brahmin or brahmins, specifying the misdemeanor and contumacy with which he or they stand charged; and the execution of the warrant is to be committed to peons of the Mahomedan religion, nor is any Hindoo to be sent on such duty. On the brahmin or brahmins against whom the warrant has been issued being brought before the magistrate, he or they are to be dealt with in the mode prescribed by sect. 5, Reg. IX. 1793*, respecting persons charged with crimes or misdemeanors; and if it appears to the magistrate on the previous enquiry, which by the said section he is himself directed to make, that the misdemeanor or misdemeanors charged (that is, the constructing of the koorh, or being prepared to wound or slay the women or children, according as either or both of these acts have been charged) were actually committed, and that there are grounds for suspecting† the prisoner or the prisoners respectively to have been concerned, either as a principal or an accomplice, in the perpetration of either or both of these acts; the magistrate is to cause him or them to be committed to prison or held to bail (according as the parties appear to have been principals or accomplices) to take his or their trial at the sessions, and is to bind over the informant or complainant and the witnesses to appear at the trial, in the manner prescribed in the aforesaid section. *Ben.* Reg. XXI. 1795, sects. 1 and 2.

If such notice has not the desired effect, a warrant is to be issued for their apprehension by means of Mussulman peons.

Magistrate how to proceed when the accused is brought before him.

* *v. para.* 258.

† *v. para.* 643.

2896. The sessions court is to conduct the trial of the brahmin or brahmins charged with the above offences in the manner prescribed in the regulations in respect to other offences; but as the Mahomedan law cannot adequately apply to offences of this local nature, it is therefore provided and ordered, that where, in the opinion of the sessions judge, the charge of being a principal in respect to the constructing of a koorh, or to having been prepared to wound or slay the women or children, is proved, the said judge is to sentence the prisoner to the payment of a fine equal to the amount of his annual income, which is to be estimated according to the best information that the judge is able to procure respecting it; and on proof to the judge's satisfaction of the prisoner's being guilty only as an accomplice, he is to be sentenced to the payment of a fine equal to one-fourth of his estimated annual income. In all cases of parties being sentenced to the payment of such fines, they are to be committed to, and are to remain in jail until the amount thereof be paid, or until they shall have delivered to the sessions court, or after the said court's departure to the magistrate, full and ample malzaminee or security to pay the same within six months from the date of their release; and such parties, before their enlargement, either in consequence of their having liquidated, or having entered into security for the payment of the fine imposed on them, are to deliver into the sessions court, or in its absence

Trial of such persons before the sessions court, and punishment to be inflicted by fine and security for good behaviour.

to the magistrate, fiulzamineo or satisfactory security from one or more creditable persons not to offend in like manner in future. *Ben.* Reg. XXI. 1795, sect. 3.

Such sentences to be always reported within 10 days to the nizamut adawlut.

2897. All sentences passed by the sessions court under the above section, without however any intermediate suspension of their execution, are to be transmitted within ten days after their being passed to the nizamut adawlut, which court may order such mitigation and restitution of the fine or fines thereby imposed, as may be thought proper; but until the order be issued by the nizamut adawlut, the sentence of the sessions court is to be considered in full force, and to be carried into effect accordingly. *Ben.* Reg. XXI. 1795, sect. 4.

In case such brahmin resists the warrant of the magistrate, or absconds, or conceals himself, the magistrate is to attach his landed property through the collector.

2898. In case any brahmin, against whom the magistrate issues the warrant prescribed in sect. 2, refuses to obey, or resists or causes to be resisted, the peons deputed to serve it, or escapes after being taken by them into custody, or absconds, or shuts himself up in any house or building, or retires to any place, so that the warrant cannot be served upon him, the magistrate is to issue a precept to the collector requiring him to cause the nearest tehsildar to attach the lands that such brahmin may possess in property, or in mortgage, or in farm, or lakhiraj. The lands are to remain attached until he surrender, and the collections made during the attachment, after deducting such revenue as may fall due to government, are to be accounted for, and paid to the party against, or on account of, or in resentment to, whom the koorh was originally established, or the woman or women, or child or children, were to be wounded or slain; and after the surrender or apprehension of the brahmin or brahmins who set up the koorh, or was or were prepared to wound or slay his or their women or children, or either of them, his or their lands are to be released; but he or they are to be proceeded against, in respect to his or their trial for the original offence or offences, as prescribed in sects. 3 and 4. *Ben.* Reg. XXI. 1795, sect. 5.

Collector to apply to the magistrate in case of brahmins establishing a koorh, or being prepared to kill or wound women or children, on account of any process from the revenue department. Magistrate how to proceed.

2899. In the event of any brahmin or brahmins establishing a koorh, or preparing to wound or slay his or their women or children, or any or either of them, with a view to prevent the serving of any dustuck or writ on him or them for arrears of revenue by the local tehsildar, or by the collector of Benares, the collector is to represent the circumstances to the magistrate; and upon the peon deputed with the dustuck, or any other creditable person or persons, attending in court and making oath to the truth of the circumstances stated in the representation of the collector, the magistrate is to proceed as above directed, requiring likewise, in his notice, the brahmin or brahmins either to discharge the balance of rent or revenue that has been demanded from him or them, or to appear, and, entering security for such part of it as he or they may have pleas against the payment of, to file his or their objections to the payment of such part in the civil court, that the merits of the case may be enquired into and decided according to the principles by which other disputed demands and accounts of revenue are directed to be determined. If the issuing of this notice fails to induce the brahmin or brahmins to comply with the requisitions of it, the magistrate is to proceed and the accused brahmin or brahmins are to be tried, as directed above in sects. 2, 3, and 4. *Ben.* Reg. XXI. 1795, sect. 6.

Brahmins causing the construction of a koorh, and persons firing it, are to be tried on a charge of murder for any loss of life occasioned thereby.

2900. If any brahmin or brahmins, on account of any discontent or alarm, well or ill founded, either against government, or its officers, or servants, establish a koorh, in which any person or persons are, at any period from its construction until its removal, burnt to death or otherwise lose their lives, in consequence of such koorh being set fire to by any person whomsoever; the brahmin or brahmins who have caused the construction thereof are to be held chargeable with, and made amenable for, the crime of murder; as well as the party or parties who have been immediately employed, or aided in setting fire to the pile or combustibles in question; and upon proof of the fact to the satisfaction of the sessions court, such brahmin or brahmins, and such person or persons, setting fire to the koorh, are to be sentenced on trial before the said court to suffer the punishment of death, in the same manner as if they had committed and been convicted of *kutl-amd*, or premeditated murder, according to the doctrines of the Mahomedan law; and, with a view to render the example as public as possible, such sentence (whether consistent with the futwa of the Mahomedan law officers, or otherwise) is in this case to be accordingly formally passed by the sessions court on the brahmin or brahmins thus convicted; but it is to be at the same time explained to the party, or parties thus condemned, as it is also hereby expressly provided, that all such trials, and the sentences passed, are by the sessions court to be submitted (in like manner as is prescribed in sect. 47, Reg. IX. 1793*) to the nizamut adawlut; and the party or parties condemned under this section are to remain in jail to await the final judgment of that court, who are to confirm or mitigate the sentence as appears proper. *Ben.* Reg. XXI. 1795, sect 7.

* *v. para.* 860.

Brahmins wounding women or children under such circumstances, how to be punished.

2901. If any brahmin or brahmins, under the circumstances and in the manner described in the preamble to and the following sections of this regulation, or under such circumstances, and in such manner, as is substantially similar thereto, with a sword or other offensive weapon, or otherwise, actually wounds his or their women or children, or other women or children; or any or either of them; on account or in resentment of any real or supposed injury committed towards him or them by any aumils, tehsildars, or other officers, or servants, employed in the revenue or judicial departments; or so wounds any of his or their own women or children, or any other woman or child, on account or in resentment of his or their differences with any individual; he or they are for such act or acts to be sentenced by the sessions court to transportation, subject to the same reference to the nizamut adawlut, and to the like mitigation as in the cases referred to in the preceding section. *Ben.* Reg. XXI. 1795, sect. 8.

Brahmins killing women or children under such circumstances how to be punished.

2902. If any brahmin or brahmins, under the circumstances and in the manner described in the preamble to and subsequent sections of this regulation, or under such circumstances and in such manner as is substantially similar thereto, with a sword or other offensive weapon, or otherwise, actually puts to death his or their women or children, or other women or children, or any or either of them, on account or in resentment of any real or supposed injury, committed towards him or them by aumils, tehsildars, or any other officers or servants employed in the revenue or judicial departments; or so puts to death any of his or their own women and children, or any other woman or child, on account or in resentment of his or their differences with any individual; he or they are to be tried for such homicide, and on the proof of the fact or facts are to be accordingly sentenced

by the sessions court to capital punishment, subject to the same reference to the nizamut adawlut, and to the like mitigation of punishment as in the cases referred to in sect. 7; and the families of any brahmin or brahmins found guilty of murder under this section are, according to the order of the governor general in council under date the 17th June 1789, and the publication made in conformity to it by the resident at Benares under date the 7th July of the same year, to be banished from the province of Benares, and the Company's territories; and his and their estates in land are to be forfeited and disposed of as to government seems proper; and accordingly the sessions court is required to subjoin this order to all sentences that they pass on brahmins for murder under this section, at the same time reporting such sentence and order to the nizamut adawlut, together with as accurate an account as they may be able to procure of the number, sex, and age of the persons composing the family of such brahmin or brahmins, and annexing their opinion how far it may be advisable or otherwise rigorously to enforce the banishment of the family of such brahmin or brahmins, or to confirm, mitigate, or annul, the order for the forfeiture of their real property; and the nizamut adawlut, on consideration of this sentence and order, and of the opinion of the sessions court, are either wholly to confirm, or to mitigate the sentence and order as appears proper; and in all cases where the forfeiture of the landed property of such brahmin or brahmins, and that of his or their family, is confirmed by the nizamut adawlut, the said court is to advise the government thereof; nor is such sentence to be carried into execution as far as regards the forfeiture of the landed property without an order from the government approving such part of the sentence, and directing in what manner the lands thus forfeited are to be disposed of. *Ben.* Reg. XXI. 1795, sect. 9.

Families of such brahmins to be banished and their lands forfeited;

but the forfeiture of the lands is not to be carried into effect without the sanction of government;

2903. Whenever the banishment is limited either to the party or parties committing the murder, or to a certain number only of his or their family or families, no confiscation or forfeiture of the landed property is in such instances to take place; but the same is to be entirely left in the possession, and as the property, of those members of the family who are exempted from banishment. *Ben.* Reg. XXI. 1795, sect. 10.

and in no case unless the whole of the family is banished.

2904. Brahmins convicted of murder within the province of Benares are no longer exempted from a sentence of death: but the execution of a sentence of death against a brahmin is not to take place within the limits of any spot of ground held sacred by the Hindoos. The magistrates are enjoined to execute all sentences of death against brahmins at some convenient place situate without such limits. Reg. XVII. 1817, sect. 15.

Brahmins convicted of murder are not exempted from death.

2905. The offence of causing or procuring abortion has not been specifically provided for by any regulation. By the Mahomedan law it does not amount to murder, though the quickened fœtus be destroyed, or the woman die from the means used to procure the abortion: and the nizamut adawlut "do not consider these offences to be of a heinous description, unless death ensue" to the woman. See C. O. No. 303 of vol. 1.(a)

Causing or procuring abortion.

(a) By the English law, under a late statute, "whosoever, with intent to procure the miscarriage of any woman, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony," punishable with transportation for life, or for not less than fifteen years or imprisonment not exceeding three years; and it is immaterial whether the woman was or was not pregnant at the time.

Mahomedan law.

Homicide is justifiable

2906. By the Mahomedan law homicide is considered as justifiable, or culpable. Justifiable homicide *(kutl-i-mobah)* is not distinctly treated of in the books: but is incidentally mentioned, as commanded in the advancement of religion or justice; as authorized in the defence of the person or property; and for the prevention of an atrocious crime; or as exempted from the provisions against unlawful homicide in consideration of some circumstances of necessity or justification. The following instances have been expressly noticed by the authorities:—I. In prosecution of war against hostile infidels, for the advancement of Islam, or in support of a Mussulman community.—II. Of an apostate from the faith of Islam, who, after being duly called upon, persists in his apostacy; an apostate being considered as an alien or enemy.—III. Of an insurgent against the rightful Imam, when slain in the act of insurrection, or of open resistance to the established government.—IV. Of a condemned criminal, by order of the kazee or magistrate authorized to pass sentence of death. So, if the magistrate order the infliction of legal punishment not capital, and it happen to occasion death.—V. Of a murderer liable to kisas, if killed by the person legally entitled to retaliation, or by his express direction, although sentence of kisas may not have been passed by the kazee. This assumption of right, without a judicial enquiry, is however deemed culpable; and the exercise of it by any other weapon than a sword, or similar instrument is declared subject to correction.—VI. In self-defence, or in defence of another, if life be endangered, or be thought in danger, from the assault of a person having a drawn sword, or other mortal weapon; provided self-defence be manifestly unattainable without killing the aggressor.—VII. In preservation of property from theft or robbery, provided the owner cannot recover his property but by killing the thief. A real or presumed necessity is required to render the homicide justifiable.—VIII. In prevention of adultery, rape, or other offences of a heinous nature, being chiefly such as, by the Mahomedan law, are punishable with death. It seems that if a person finds a man in the act of adultery, or in the attempt to commit it, with his own wife, or other near connexion, and the latter assenting thereto, he may kill them both; or, where the female is not consenting, he may kill the violator; (*N. A. R. vol.* 1, *pages* 5, 78, 156.) the concealment of such killing would however render him liable to punishment; (*N. A. R. vol.* 1, *page* 240,) and it is sufficient presumption of adultery if he finds a man in bed with his wife; (*N. A. R. vol.* 1, *page* 151,) but the homicide is not justifiable after the completion of the adultery, unless the person slain has been found in the house of the husband, master, or relation, who kills him; (*N. A. R. vol.* 1, *pages* 39, 71, 74*n*, 78, 197,) nor is a mere suspicion of adultery a sufficient justification; (*N. A. R. vol.* 2, *page* 100,) nor, in the case of any other woman (or according to Imam Mahomed in any case) would the homicide be justifiable, unless all other means within the power of the slayer, as calling out, should have failed to prevent the commission of the offence. (*N. A. R. vol.* 1, *page* 74.)—IX. The killing another at his express desire or command: (*N. A. R. vol.* 1, *page* 1,) for a man has power to dispose of his own life, as of other personal and proprietary rights; and therefore suicide incurs no forfeiture or other penalty, under the temporal law of Islam; and so, as homicide by duelling is committed by mutual consent, the penalty of murder is not incurred. (*N. A. R. vol.* 1, *page* 277.)—X. By compulsion, under menaces which induce a fear of death: but such homicide is not strictly justifiable, the penalty of kisas being

in war;

of an apostate;

of an insurgent;

of a condemned criminal;

of a murderer liable to kisas, by the person entitled thereto;

in self-defence, or defence of another;

in preservation of property from theft;

in prevention of adultery or other heinous crime;

by desire of the person killed;

and by compulsion.

transferred to the compeller, and the compelled person liable to discretionary punishment, if the circumstances of the case appear to require it.* This principle, which regards the compelled person as the instrument rather than the author of the homicide, is applicable to every case of physical compulsion and necessity: but no illegal act can be justified by the mere command or influence, unaccompanied with force or menaces, of a parent, husband, or master, or of any person whatever. Neither is the justification of homicide in support of the law, and of legal process, in all cases expressly provided for; though it cannot be doubted that in cases of resistance to such process, any acts unavoidably done in the execution of public duty might be justified; and that the principles of justification which have been stated, in cases of a private nature, would be applicable with additional force in all matters connected with the execution or advancement of public justice. The general principle on which the above rules are founded is, that every Mahomedan may inflict tazeer upon a criminal in the act of committing a crime, but that after the completion of the offence the magistrate alone is authorized to punish the offender.

* *v. N. A. R. vol.* 1, *page* 101.

General principle.

2907. The Mahomedan law recognizes five descriptions of culpable homicide:—1. *kutl-amd*, or wilful homicide; implying a murderous will evinced by a voluntary act, and by the use of a mortal instrument, or something likely to occasion death:—2. *kutl-shibah-amd*, or wilful-like; *i. e.* resembling the former in the voluntariness of the act, but differing from it by the use of an instrument not considered to endanger life, and therefore not evincing a murderous intention:—3. *kutl-khota*, or erroneous homicide; viz. by an erroneous act, or by error in the intention:—4. *kutl-kayeem-mokam-i-khota*, called also *jaree-mujra-i-khota*, or involuntary homicide:—5. *kutl-ba-subbub*, or accidental homicide by an intervenient cause.

Five descriptions of culpable homicide.

2908. *Kutl-amd* is defined in the Hedayah to be "homicide committed by a responsible (*i. e.* a sane and adult) person, wilfully striking another person with a mortal weapon, or something that serves for such, as a sharp piece of wood, a sharp stone, or fire." It is added in explanation, that "*amd* means intentional; but the intention, being concealed in the mind, can be discovered only by something affording proof of it; and as the use of a common instrument of homicide does afford such proof, when the slayer of a man uses an instrument of that description, it proves his intention to kill."

Wilful homicide, *kutl-amd.*

2909. *Shibah-amd* differs from *kutl-amd* only as regards the intention to kill. Aboo Huneefah and his disciples disagree as to the definition of this offence; but the difference between them respects only the instruments to be admitted as sufficient evidence of the intent to kill; the former restricting *kutl-amd* to cases in which a mortal weapon (i. e. one appropriated or commonly used for the purpose of killing) is the instrument of death, the latter including therein all instruments likely to kill. (*N. A. R. vol.* 1, *pages* 5, 65, 95.) Thus, the disciples hold in opposition to Aboo Huneefah that murder by strangling is liable to kisas. (*N. A. R. vol.* 1, *page* 41.) And where the weapon was not found, the futwa declared the prisoner convicted of *shibah-amd* only. (*N. A. R. vol.* 3, *page* 106.) According to the uniform opinion of Aboo Huneefah and his disciples, killing by poison, in whatever manner it may be given, is not deemed wilful homicide. The fine of blood is payable as for manslaughter, if the poison be compulsively put by another

Wilful-like, *kutl-shibah-amd.*

into the mouth of the deceased. But if the deceased took the poison into his own hands, and eat or drank it without compulsion, though he did not know it to be poison, the giver is liable to discretionary punishment only. But the discretionary punishment, it is said, should extend to death; as the offence is of that heinous nature which is declared punishable with death for the security of mankind. (*N. A. R. vol.* 1, *page* 58.)

Erroneous homicide, *kutl-khota.*

2910. The error which distinguishes *kutl-khota,* or erroneous homicide, is either in the act, or in the intention: in the former, as when an arrow is shot at a mark and hits a man, or when a blow aimed at one person undesignedly strikes another; if an arrow shot at one person pass through him, and afterwards kill another, the homicide is wilful as regards the first, and erroneous as regards the second: in the latter, as when one shoots at a man mistaking him for a deer; or when a Mussulman kills another Mussulman under a supposition of his being a hostile infidel whom it is lawful to kill.

Involuntary homicide, *kutl-kayeem-mokam-i-khota.*

2911. *Kutl-kayeem-mokam-i-khota* is involuntary homicide by an involuntary act; as when a sleeping person falls on another from the roof of a house, and kills him in the fall; or where a horse tramples a person to death, without the rider's designing it, or being able to prevent it.

Accidental homicide by an intervenient cause, *kutl-ba-subbub.*

2912. Accidental homicide by an intervenient cause, *kutl-ba-subbub,* is when a person, by doing an illegal act, produces a cause which occasions the death of another; as if a man digs a well in ground not belonging to him, and another falls into the well and is killed.

Penalty for wilful homicide.

2913. Mr. Harington gives a series of cases, quoted from the Hedaya and the Futawa-i-Aalumgeeree, explanatory of the differences between the several descriptions of homicide noted above; in which the distinction has been settled into precedent; but it seems that the general definitions here given will suffice for practical purposes.—The penalty for *kutl-amd* is kisas, unless the heirs or representatives of the slain forgive or compound the offence. The murderer is also excluded from inheritance to the property of the slain. The retaliation allowed for murder is stated to have two ends in view: first, satisfaction to the heirs of the slain; secondly, the determent of others, by exemplary punishment, from committing the same crime. The latter, however, though the true and only justifiable motive for capital punishment, by human laws, is a secondary object of the law of kisas; which considers the private injury in cases of homicide, unaccompanied with highway robbery or other violent breach of the peace, to be of greater magnitude than the public detriment; and consequently leaves the demand of retaliation, with liberty of forgiveness or composition, to the feelings and discretion of the legal representatives of the person murdered. The punishment for *shibah-amd, kutl-khota, and kayeem-mokam-i-khota,* includes deyut, or the fine of blood, exclusion from inheritance, and expiation (*kuffarah*) by emancipating a Mussulman slave or fasting for two months. Deyut only is incurred for *kutl-ba-subbub.*

Penalties for the other descriptions of homicide.

In what cases of wilful homicide, kisas is incurred;

2914. The first requisite for retaliation is that the blood of the deceased was under protection of the law, from permanent residence within the territory of a Mahomedan state (dar-ool-islam) in subjection to its authority; and in such case the slayer is equally liable to retaliation, whether the party slain were a Mussulman or a zimmee, the

slave of another (not the slayer's) or free, a woman or a man, an infant or of mature age, sound in body and mind, or sick, dismembered, blind, lame, or insane; but a Mussulman may not be put to death for a moostamin, that is, an alien in a state of enmity. Retaliation is not incurred by a parent, or by any paternal or maternal ancestor, for the murder of a child, or lineal descendant, in consequence of a specific declaration to that effect in the koran, and in consideration of the slain having derived existence from the slayer*: and as kisas is the right of the heir, it cannot be awarded against a master for the murder of his slave, for the master would be the only person entitled to demand it; nor for the murder of his child's slave, because the claim for retaliation would accrue to the child against the father, and the enforcement of such a right is forbidden out of regard to paternity. If the slave were the joint property of the murderer and others, the other owners could not claim retaliation, for their right is not entire, and retaliation of death does not admit of being inflicted in part only. If a murder be committed by several, one of whom is legally exempt, retaliation is barred against the whole; but if none can claim exemption, then the analogy of equality, which would require that one be put to death for the murder of one, is abandoned in favor of a more approved construction of law, namely, that each individual concerned is as if he alone had committed the act; and the requisite equality being thus established, retaliation is incurred, that the lives of mankind may be in security. If two persons jointly commit homicide, one with a mortal weapon, the use of which characterizes wilful murder, and the other with a weapon not likely to inflict death, retaliation is barred against both; but the fine of blood is payable in equal shares; one-half to be paid by him who struck with the mortal weapon, because in all cases in which the fine is not the prescribed punishment, but a commutation, the fine is due from the property of the offender; and the other half by the akila of him, who struck with the weapon not deadly, because specific fines for offences are due from the akila.

and in what not incurred.

* *N. A. R. vol.* 1, *pages* 24, 103, 231, 370; *vol.* 2, *page* 161.

Rule when more than one person is concerned in the murder.

By whom the fine of blood is to be paid.

2915. To warrant a sentence of kisas, the Mahomedan law requires either the confession of the accused, or the positive testimony of two competent eye-witnesses of ascertained or apparent credit. No presumptive evidence is sufficient; and kisas is barred by any doubt as to the justification or other exculpatory plea of the accused. Thus the confession must declare that the blow, wound, or other cause of death, was wilful; and inflicted by the prisoner's own hand; and the whole of what is stated in explanation must be considered as part of the confession. Where sufficient evidence is not adduced, and there appear to be grounds for conviction from the whole of the evidence on the trial and the circumstances of the case, the conviction is stated to be upon ghalib-oo-zun, ackbur-oo-raee, shoobah-i-cuvvee, or shudeed, meaning strong or violent presumption. (*N. A. R. vol.* 1, *pages* 11, 26, 35, 70, 202; *vol.* 2, *page* 60.) The law officers have declared kisas barred on the ground of its not being proved which prisoner inflicted the mortal wound; but the prisoners were held liable to deyut and exemplary punishment by seasut. (*N. A. R. vol.* 3, *page* 75.)

Evidence required to warrant a sentence of kisas.

2916. Retaliation for murder is considered to be the right of the person murdered, and to devolve to his legal heirs, who represent him in the exaction of it. This right therefore appertains to the husband, and to the wife, as well as to the heirs of blood; and the same rule is applicable to the right of deyut. If the heir of the slain be a minor, or

By whom retaliation for murder is demandable.

idiot, and his or her father be living, the latter is entitled to demand or compound retaliation; but an appointed guardian, not being the father, is not so empowered, "because, the end of retaliation being relief and satisfaction to the mind, the father alone is a sufficient substitute for his children with respect to their feelings." Where some of the heirs are minors, and some adult, the lawyers differ as to the right to demand kisas before the former attain maturity; the two disciples maintaining the imperfection of the right: and so, when one or more of the heirs is an idiot, or insane, or absent. When all the heirs are minors, some lawyers consider the sovereign, or his delegate, to have the power of enforcing kisas in their behalf; while others think that it should be deferred till one or more of the minors become of age. It is however generally agreed, that if there is no heir or legal representative, the kazee, as the deputy of the sovereign, may enforce retaliation of death.

Right of such persons to compound their claim to kisas

2917. Retaliation of death, in cases of murder, being considered the private right of the heirs, they are at liberty to remit their claim, and forgive the offender, or to compound with the consent of the murderer for such compensation as the parties agree upon. If there be several heirs, and one of them forgive the offence, or compound with the offender, the other heirs are thereby debarred from enforcing kisas, but are entitled to their proportion of the fine of blood. If a man murder two persons, and the heirs of one only forgive him, the heirs of the other are still at liberty to demand retaliation. In like manner, when two or more persons are murdered, the heirs of any of them, who may attend and demand kisas, are entitled to the enforcement of it without waiting the attendance of the heirs of all the slain; and when the offender has suffered retaliation of death for one murder, the heirs of other persons murdered by him are not entitled to claim payment of the fine of blood from his estate: nor is such fine payable, if the party, liable to kisas for murder, die before the execution of it. But if a murderer, sentenced to suffer kisas, become insane before he has been delivered over by the kazee for execution, he is not to be put to death; and his property is answerable for the fine of blood. If he become insane after he has been condemned and delivered over for execution, he may nevertheless be put to death. It is not requisite that the heir should execute the sentence with his own hand; but his presence is requisite. A sword or similar weapon is the prescribed instrument; and the established mode of execution is by decapitation. (a)

How far insanity bars the execution of sentence of kisas.

Execution.

Precedents.

Murder of wife or concubine.

Incited by causes connected with adultery or jealousy.

2918. Prisoner sentenced to death, on conviction of the murder of his wife under a sense of disgrace or irritation from her adulteries; *N. A. R. vol.* 1, *pages* 68, *and* 133; *vol.* 2, *pages* 160, *and* 167; *and vol.* 3, *pages* 15, *and* 71:—on conviction of the murder of his wife and two children, from suspicion of his wife's fidelity; *N. A. R. vol.* 1, *page* 108:—on conviction of the murder of his wife and mother-in-law from jealousy of the former; *N. A. R. vol.* 2, *page* 100:—on conviction of the murder of his wife or concubine from motives of jealousy; *N. A. R. vol.* 1, *pages* 21, 32, 77, 84, *and* 86. Sentenced to imprisonment for life, on conviction of the murder of his wife from feelings of jealousy; *N. A. R. vol.* 2, *page* 85; *vol.* 3, *page* 154:—on conviction of the murder of his wife in a fit of passion at her attempting to justify the adultery she had committed the day before; *N. A. R. vol.* 2, *page* 237:—on conviction of the murder of his wife and a procuress, and wounding

(a) Harington's Analysis, vol. 1, pages 243, *et. seq.*—Hedaya, book 49, and *passim.*

a servant-maid who had aided his wife in an adulterous intercourse, and also wounding two men with whom she had committed adultery; *N. A. R. vol.* 2, *page* 397 :—on conviction of the murder of his wife, under feelings of shame excited by the violation of her person; *N. A. R. vol.* 2, *page* 411 :—on receiving abusive language when begging her to desist from criminal intercourse with another man; *N. A. R. vol.* 2, *page* 79. Sentenced to imprisonment for 7 years on conviction of the deliberate murder of his wife and a man with whom she had eloped, but not in the act of adultery; *N. A. R. vol.* 1, *page* 197. Sentenced to imprisonment for life, on conviction (five years after the occurrence) of the murder of his wife, the justificatory plea contained in his thana confession, that he caught her in the act of adultery, being subsequently retracted; *N. A. R. vol.* 2, *page* 472. Sentenced to death, on conviction of the murder of his wife for leaving or threatening to leave his house; *N. A. R. vol.* 1, *pages* 12, *and* 331; *vol.* 3, *page* 345 :—on conviction of the murder of his concubine, for refusal to continue the adulterous intercourse; *N. A. R. vol.* 1, *pages* 64, *and* 67 :—for refusal to take drugs to procure abortion; *N. A. R. vol.* 1, *page* 335. Sentenced to transportation for life, on conviction of the murder of his mistress in a fit of sudden passion on her refusing him access to her; *N. A. R. vol.* 6, *page* 56.

Incited by other causes.

2919. Prisoner sentenced to death on conviction of the murder of his wife after a quarrel, the provocation if any arising from his own conduct; *N. A. R. vol.* 1, *page* 24. Sentenced to imprisonment for life on conviction of the murder of his wife in a quarrel without premeditated intention, or without intent to kill; *N. A. R. vol.* 2, *page* 178; *vol.* 3, *page* 250; *vol.* 4, *page* 90 :—and in a case of the same nature, sentenced to imprisonment for 7 years; *N. A. R. vol.* 1, *page* 112. Sentenced to death for murder of concubine or wife, on provocation of abusive language; *N. A. R. vol.* 1, *pages* 60, *and* 86; *and vol.* 5, *page* 160. Where the motive did not appear, sentence of death was passed in *N. A. R. vol.* 1, *page* 103; *vol.* 2, *page* 102; *vol.* 3, *page* 235; and sentence of imprisonment for life in *N. A. R. vol.* 2, *page* 175; *and vol.* 4, *page* 125. Prisoner convicted of the murder of a woman whom he had married during the absence of her lawful husband, on receiving a summons from the criminal court in a suit instituted against him by the husband, under Reg. VII. 1819, for her restoration, and sentenced to death; *N. A. R. vol.* 3, *page* 343. Prisoner convicted of the murder of his wife, who was insane, after she had as alleged by him, killed his two daughters; and sentenced to imprisonment for life; *N. A. R. vol.* 4, *page* 133.

Motive unknown.

Other cases.

Murder of the wife's paramour by the husband.

Without justification.

2920. Prisoner sentenced to death, on conviction of murder of the supposed paramour of his wife from revenge for the adultery; *N. A. R. vol.* 1, *pages* 15, 20, *and* 128. Sentenced to imprisonment for life in cases of the like nature; *N. A. R. vol.* 2, *page* 98; *and vol.* 4, *page* 255. Sentenced to transportation for life, on conviction of killing his wife's paramour, and wounding his wife, when he found them in adulterous intercourse in the middle of the night, although he had long known that a criminal intercourse existed between them; *N. A. R. vol.* 6, *page* 27. Sentenced to imprisonment for 7 years, on conviction of murder from resentment of deceased having attempted to violate his wife; *N. A. R. vol.* 1, *page* 61. Conviction of murder in revenge for the seduction of his wife; but, the province of Kumaon having been recently brought under the British rule, the plea of long established usage, as opposed to the laws lately introduced and imperfectly under-

With a certain justification.

stood, was admitted in mitigation of punishment, and the sentence passed was for imprisonment for only 5 years; *N. A. R. vol.* 1, *page* 388. Sentenced to imprisonment for 2 years, on the presumption that he killed the deceased in the act of adultery with his wife; *N. A. R. vol.* 1, *page* 375. Sentenced to imprisonment for 1 year, on conviction of the murder of his servant, who had forcibly carried off his wife, and had criminal intercourse with her, and whom he suspected of stealing his cattle and setting fire to his house; *N. A. R. vol.* 1, *page* 95. Prisoner pardoned, after conviction of murder, under circumstances of extreme provocation, from the deceased (after having been forewarned of the consequences by the prisoner) being found in the prisoner's house at night attempting to violate his wife; *N. A. R. vol.* 1, *page* 71.

Murder of the husband by the wife or her paramour.

2921. Prisoner sentenced to death, on conviction of murder of the husband in prosecution of an adulterous intercourse with the wife; *N. A. R. vol.* 1, *pages* 2, 38, 72, 78, *and* 175. Where the wife was concerned in the commission of the murder, she also was sentenced capitally; *N. A. R. vol.* 1, *page* 81:—where she was convicted of privity before or after the fact, the paramour was condemned to death, and the wife to imprisonment for 7 years; *N. A. R. vol.* 1, *page* 117; *and vol.* 2, *page* 75;—and in one case for life; *N. A. R. vol.* 5, *page* 116. In a case where the wife and her paramour were convicted on violent presumption of the murder of the husband by poison, but where the actual proof that death was caused by the poison was wanting, both prisoners were sentenced to imprisonment for life, the man in the Allipore, the woman in the district jail; *N. A. R. vol.* 2, *page* 156. In a case where the paramour killed the husband, but without apparent intent to murder, in the husband's house, the blows appearing to have been struck with a view to facilitate his escape on being recognized, he was sentenced to imprisonment for 14 years; *N. A. R. vol.* 1, *page* 167.

Presumptive proof.

Without intent to murder.

Murder from revenge caused by adultery or rivalry.

Sentence of death.

2922. Prisoner sentenced to death, on conviction of murder from rivalry in adultery; *N. A. R. vol.* 1, *pages* 9, 11, 35, 184; *and vol.* 2, *page* 342:—from revenge for obstructing the prosecution of criminal intercourse (the person killed in one case being the mother of the prisoner and the adulteress his aunt); *N. A. R. vol.* 1, *pages* 26 *and* 93:—on conviction of the murder of his sister and her paramour (the father and mother of the prisoner convicted as accessaries, but released on account of age and infirmity); *N. A. R. vol.* 4, *page* 323:—on conviction of the murder of his two cousins for adultery with his wife, a woman of acknowledged bad character, the murder being committed a fortnight after she had left his house to live with them; *N. A. R. vol.* 3, *page* 145:—on conviction of murder in revenge for adultery with his sister; *N. A. R. vol.* 1, *pages* 9, *and* 78. Prisoner sentenced to death, on conviction of the murder of a rival wife by poison; *N. A. R. vol.* 2, *page* 347. No. 1 convicted as principal, and No. 2 as accessary, in murder from revenge for criminal intercourse of the sister of No. 2 (she being related to the other prisoner) and the deceased; and sentenced No. 1 to imprisonment for life, and No. 2 for 7 years; *N. A. R. vol.* 4, *page* 130. Prisoners (a Hindoo and a Mussulman) sentenced to imprisonment for life, on conviction of the deliberate murder of a Hindoo priest in revenge for his intriguing with their wives; *N. A. R. vol.* 5, *page* 14.—No. 1 convicted as principal, and Nos. 2 and 3 as aiders and abettors, in the murder of deceased whom they

Rival wife.

When the act was committed under provocation, the sentence has been of imprisonment for life, or for a shorter period.

caught in the act of criminal intercourse with the daughter of No. 1, and sister of the others; and sentenced No. 1 to imprisonment for 7 years, and Nos. 2 and 3 for 4 years; *N. A. R. vol.* 5, *page* 104. Prisoner sentenced to imprisonment for 3 years, on conviction of murder under great provocation, the deceased forcibly carrying off his sister from his house at night, with an apparent intention of having criminal connection with her; *N. A. R. vol.* 1, *page* 125.

Murder from enmity or revenge.

Sentence of death passed where no circumstances extenuated the malice.

2923. Sentence of death passed, on conviction of murder, in prosecution of previous enmity; *N. A. R. vol.* 1, *pages* 6, 47, 182, 190; *vol.* 2, *pages* 5, 152, 241, 293; *and vol.* 5, *page* 9;—where the murder was committed in an open attack by a large body of men; *N. A. R. vol.* 1, *page* 323:—on conviction of murder, in revenge for various trifling causes of offence; *N. A. R. vol.* 1, *pages* 41, 43, 45, 65, 83, 88, 105, 135, 145; *vol.* 5, *page* 98; *vol.* 6, *page* 25:—in revenge for exacting usury; *N. A. R. vol.* 1, *page* 27; on a quarrel regarding money-matters; *N. A. R. vol.* 1, *page* 172; *vol.* 5, *page* 45; in the last case the prisoner's great age, 80 years, and infirmities was not considered a bar to capital punishment:—on a quarrel arising in a dispute regarding property; *N. A. R. vol.* 1, *page* 15; *vol.* 2, *page* 58; *and vol.* 3, *page* 256:—in revenge for abuse; *N. A. R. vol.* 1, *pages* 46, *and* 50:—in revenge for executing process against him; *N. A. R. vol.* 3, *page* 175:—for not attending as police officer to his complaint; *N. A. R. vol.* 1, *page* 80:—for not consenting to prisoner's marriage with his daughter; *N. A. R. vol.* 1, *page* 92:—in revenge for the death of his father in an affray which occurred seven years previously; *N. A. R. vol.* 1, *page* 89:—on conviction of the murder of the woman in order to conceal the rape; *N. A. R. vol.* 5, *page* 94:—in order to prevent the deceased from bringing a charge of theft against him; *N. A. R. vol.* 2, *page* 149:—on conviction of the murder of his own daughter from revenge against his son-in-law; *N. A. R. vol.* 2, *page* 355:—of her son in revenge for his turning her paramour out of the house; *N. A. R. vol.* 4, *page* 154:—of the murder of one person with a view of charging the murder against another from enmity; *N. A. R. vol.* 4, *page* 235: *vol.* 5, *pages* 7, 100, *and* 142:—convicts murdering the magistrate; *N. A. R. vol* 4, *page* 296;—and subordinate jail officer; *N. A. R. vol.* 5, *and* 37:—murder committed under the influence of a spirit of fanaticism; *N. A. R. vol* 5, *page* 4:—massacre committed during the Cole insurrection; *N. A. R. vol.* 4, *page* 222. In a case where the prisoner was a professed *lateeal*, the absence of any previous ill-will against the deceased was held to be an aggravation rather than a mitigation of the offence; *N. A. R. vol.* 6, *page* 53.

Case of professed lateeal.

Sentence of imprisonment for life;—where the murder was unpremeditated;

2924. Sentence of imprisonment for life passed, on conviction of murder in sudden quarrel; *N. A. R. vol.* 2, *pages* 183, 301; *vol.* 3, *pages* 25, 199; *vol.* 4, *pages* 110, 242, *and* 325; where the husband and wife quarrelled before going to sleep, and the wife got up during the night and killed him; *N. A. R. vol.* 6, *page* 33:—where the motive was previous enmity, but the actual murder unpremeditated; *N. A. R. vol.* 3, *page* 67; where the murder was committed under irritation at being accused of theft by the deceased; *N. A. R. vol.* 2, *page* 193:—where the enmity arose from deceased having accused the prisoners falsely of heinous crimes, and having extorted money from them to conceal his knowledge of the pretended accusations; *N. A. R. vol.* 4, *page* 76:—where the motive was

revenge for abuse, but the intent to kill not clearly apparent; *N. A. R. vol.* 4, *page* 335; where slight provocation had been received, and the proof amounted to violent presumption only; *N. A. R. vol.* 6, *page* 43:—where the prisoners were convicted on violent presumption only; *N. A. R. vol.* 5, *page* 161:—where the criminal was a hill man, acting under the impulse of violent passion, inflamed by drinking ardent spirits, and was not apprehended until 17 months after the deed; *N. A. R. vol.* 4, *page* 102:—where the prisoner and the deceased were rival doctors in the village, and the proof rested on the confession of the prisoner extenuated by the assertion that he killed the deceased under the impression that he was a thief; *N. A. R. vol.* 4, *page* 127:—where the evidence rested on the confession of the prisoner which contained an extenuating plea; *N. A. R. vol.* 3, *page* 244:—where a brother murdered his sister, not from malice, but to prevent her conversion to Mahomedanism, and the proof rested on the confession of the prisoner; *N. A. R. vol.* 2, *page* 33:—where the prisoner killed the deceased who came to him for a debt and would not let him eat or drink, and there was no other evidence than the confession of the prisoner; *N. A. R. vol.* 2, *page* 39:—where the crime was committed in a case of assault and plunder, perpetrated 15 years previously, and two of the accomplices had been sentenced at the time for affray to one year's imprisonment without labor; *N. A. R. vol.* 3, *page* 164:—where the prisoner killed the deceased at her own request, and the proof rested chiefly on his own confession; *N. A. R. vol.* 5, *page* 118. Capital punishment has also been remitted, in consideration of the youth of the prisoner, 15 years; *N. A. R. vol.* 3, *page* 200:—in consideration of the futwa being for an entire acquittal; *N. A. R. vol.* 3, *page* 335:—when the murders were committed at the breaking out of the insurrection of the Coles, in which the people were excited by their superiors to every act of violence and bloodshed; *N. A. R. vol.* 4, *page* 240.

presumptive proof;

prisoner a hill man;

proof on confession containing an extenuating plea;

accomplices previously sentenced as for a minor offence.

various cases.

Motive unknown.

2925. Where the motive for the murder has not been shown, the murderers have generally been sentenced to death; *N. A. R. vol.* 1, *pages* 82, 100, 115, 144, 200; *vol.* 2, *pages* 254, 289; *and vol.* 3, *page* 82:—but in two similar cases in which the evidence amounted to violent presumption only, the sentence passed was for imprisonment for life; *N. A. R. vol.* 1, *page* 19; *and vol.* 3, *page* 108.

Cases of Garrows.

2926. The prisoners, a Garrow chief and his bondsman, were convicted of the murder of another of his bondsmen; but, with reference to the barbarous state of the country, the provocation given by the deceased, the authority formerly exercised by the family of the chief, the subjection to him as his bondsman of the other prisoner and the other circumstances of the case, they were sentenced to imprisonment for two years; *N. A. R. vol.* 3, *page* 140:—in another case, where there was no evidence against the prisoner, a Garrow, except his own voluntary confession that he had put the deceased to death, because he would not pay his debt, sentence was passed of 14 years' imprisonment with labor and irons in banishment; *N. A. R. vol.* 4, *page* 270.

Principals and accessaries.

Cases in which the principals have been sentenced to death.

2927. Among the cases cited above, the principals and accomplices have both been sentenced to death; *N. A. R. vol.* 1, *pages* 45, *and* 190:—or the principals sentenced to death, and the accomplices to imprisonment for life; *N. A. R.* vol. 1, *pages* 27, 47, 182, 200, 323; *vol.* 2, *pages* 3, 289; *vol.* 4, *pages* 154, *and* 296:—where the prisoners were

convicted of the murder of a whole family, from motives of revenge, for their having purchased the estate of some of the prisoners at a public sale for government arrears, 4 were sentenced to suffer death, 14 imprisonment for life, and the others imprisonment for 14 years; *N. A. R. vol.* 2, *page* 58:—in a somewhat similar case, where an attack was made by a body of 20 or 25 armed persons, and a whole family most babarously murdered, 2 of the most active were sentenced to death, and the others to imprisonment for 7 years in banishment, chiefly on their own confessions; *N. A. R. vol.* 4, *page* 222:—where 3 of the prisoners, convicted as principals in the murder were sentenced capitally, a fourth for the same offence, but as having a less active share, was sentenced to imprisonment for life; a fifth for being privy to the same to imprisonment for 7 years; and a sixth for privity after the fact to 3 years' imprisonment; *N. A. R. vol.* 2, *page* 293:—where the 4 principals were sentenced, 2 to death, and 2 to imprisonment for life, an accessary after the fact was sentenced to 3 years' imprisonment; *N. A. R. vol.* 3, *page* 256:—where the 2 principals were sentenced, one to death, and the other to imprisonment for life, 2 others were sentenced to imprisonment for three years for privity after the fact and concealing their knowledge thereof; *N. A. R. vol.* 4, *page* 235:—where the prisoners, four brothers, murdered a woman, whom they had forcibly carried off, and whom three of them had ravished, 2 were sentenced capitally, one to imprisonment for life, and one to imprisonment for 21 years; *N. A. R. vol.* 5, *page* 94:—where the actual murderer was sentenced to death, the principal in the second degree was sentenced to imprisonment for life, 4 as aiding and abetting to imprisonment for 7 years, and one aiding and abetting but acting under influence to 4 years' imprisonment; *N. A. R. vol.* 6, *page* 53. Where the prisoners were convicted of being present at and aiding and abetting in the massacre of 33 persons from enmity, the principals having escaped, they were sentenced to imprisonment for life; *N. A. R. vol.* 2, *page* 173:—where there was no proof by whose hand the murder had been committed, 3 prisoners were sentenced as accomplices to imprisonment for life, one as being present and cognizant of the intent to 14 years', and another as aiding and abetting to 7 years' imprisonment; *N. A. R. vol.* 3, *page* 282:—where one prisoner was seen beating the deceased, but there was no other evidence as to her death, and the other prisoner the husband of the deceased concealed her death until the discovery of the body with marks of violence thereon, the former was sentenced as aiding and abetting in the murder to imprisonment for life, and the latter for 7 years; *N. A. R. vol.* 4, *page* 5:—where the prisoners were convicted of being accomplices in the murder, the principal, a European, having been tried and acquitted in the supreme court, 3 were sentenced to imprisonment for life, 3 for 14 years, and 3 for 7 years; *N. A. R. vol.* 4, *page* 15:—where the prisoner was convicted of being an accomplice in murder, for which his associates had been tried 4 years previously and sentenced to imprisonment for life, the same sentence was passed upon him; *N. A. R. vol.* 4, *page* 328. On conviction of being an accessary after the fact in assisting to carry off the body of the person murdered and in concealing his knowledge of the fact, the prisoner was sentenced to 14 years' imprisonment in banishment; *N. A. R. vol.* 2, *page* 372:—a prisoner convicted of privity to murder and concealing his knowledge thereof was sentenced to imprisonment for 7 years; *N. A. R. vol.* 4, *page* 54:—two prisoners, convicted of privity to murder after the fact and clandestine

Cases in which none of the prisoners were sentenced as principals.

Accessaries after the fact and privity.

disposal of the body, were sentenced to 3 years' imprisonment; *N. A. R. vol.* 4, *page* 302:—two prisoners convicted of concealment of murder and throwing the body of the murdered person into the river were sentenced to 2 years' imprisonment, and two more, one as an accomplice in the concealment, and the other a chokeedar for not giving information after having seen the corpse, to imprisonment for one year; *N. A. R. vol.* 4, *page* 2.

Chokeedar guilty of privity.

Murder of children for their ornaments.

Sentence of death.

2928. On conviction of the murder of a child for its ornaments, the prisoner has generally been sentenced to death; *N. A. R. vol.* 1, *pages* 16, 16, 18, 33, 43, 70, 72, 75, 76, 102, 119, 139, 152, 162, 185; *vol.* 3, *page* 311; *and vol.* 4, *page* 182:—so, when the evidence was only circumstantial; *N. A. R. vol.* 4, *page* 305:—so, when the prisoner was only 20 or 18 years of age; *N. A. R. vol.* 4, *page* 265; *vol.* 5, *page* 178. When the conviction was only of assault with intent to murder, the prisoner was sentenced to transportation for life; *N. A. R. vol.* 1, *pages* 48, 332, 351; *vol.* 2, *pages* 418, 479; *vol.* 3, *page* 342; *and vol.* 4, *page* 79:—where the body was not found, the sentence was for imprisonment for life; *N. A. R. vol.* 2, *page* 489:—and so, where the prisoner was convicted on violent presumption of having made away with the child, he was sentenced to imprisonment until the fate of the child should be ascertained, or it be proved that he died by means not implicating the prisoner; *N. A. R. vol.* 1, *pages* 226, 305; *vol.* 3, *page* 122; *vol.* 4, *pages* 47, 136, 327. Where the prisoner was (apparently) less than 18 years of age, he was sentenced to imprisonment for life; *N. A. R. vol.* 5, *page* 53; and so, where his age was respectively 9, 16, 14, 13; *N. A. R. vol.* 1, *page* 213; *vol.* 2, *pages* 145, 471; *and vol.* 3, *page* 179:—in two cases, where the prisoner was 13 or 14 years of age, the sentence was for transportation for life; *N. A. R. vol.* 1, *page* 215; *and vol.* 2, *page* 2:—and in one case, in accordance with the futwa, a boy aged 12 was sentenced to 30 stripes and imprisonment for 5 years; *N. A. R. vol.* 1, *page* 148:—where the proof was presumptive only, a boy aged 15 was sentenced to imprisonment for 10 years; *N. A. R. vol.* 2, *page* 20. The accomplice in one case, as well as the principal, was sentenced to death; *N. A. R. vol.* 1, *page* 75:—where the principal was capitally sentenced, and his accomplice a lad of 12 or 14 years, the latter in consideration of his youth was sentenced to imprisonment for 7 years; *N. A. R. vol.* 4, *page* 305:—where the prisoner was convicted of being an accomplice but not actually concerned in the murder, for which the principal was condemned to death, he was sentenced to imprisonment for 5 years; *N. A. R. vol.* 1, *page* 33:—a boy aged 9 years convicted of aiding his mother in the murder, for which she was capitally sentenced, was discharged without punishment in consideration of his extreme youth; *N. A. R. vol.* 1, *page* 152:—three prisoners convicted of being privy to the murder and accessaries after the fact were sentenced to 39 stripes and imprisonment in banishment for 7 years; *N. A. R. vol.* 1, *page* 168:—prisoner convicted of being privy to the murder and concealing his knowledge thereof was sentenced to imprisonment for 5 years; *N. A. R. vol.* 3, *page* 73.

Sentence of imprisonment for life, where intent to murder was not proved; where the body was not found; on violent presumption.

Cases of prisoners under 18 years of age.

Accessaries,

and privity;

Murder of children from other motives.

Sentence of death.

2929. A father, convicted of killing his child from anger against another person, was sentenced to death; *N. A. R. vol.* 1, *page* 370; *vol.* 2, *page* 446:—so a mother; *N. A. R. vol.* 3, *page* 288:—so, a mother on a quarrel with her husband; *N. A. R. vol.* 2, *pages* 27, *and* 146:—so, when the prisoner murdered a child from revenge against its mother; *N. A. R. vol.* 1, *pages* 4, *and* 313:—prisoner convicted of the murder

of his infant nephew without apparent malice or motive, and sentenced to death; *N. A. R. vol.* 2, *page* 344:—prisoner convicted of the murder of two children and wounding another and two other persons, where the only assignable motive was that he had lost his situation of village chokeedar, was sentenced to death; *N. A. R. vol.* 3, *page* 268. A mother, convicted of the murder of her child, apparently under the influence of frenzy at the loss of her two other children who were accidentally drowned, was sentenced to imprisonment for life; *N. A. R. vol.* 1, *page* 382:—so, a mother convicted of throwing herself and her two children into a well, which caused the death of the youngest child, apparently under the influence of sudden anger excited by a previous altercation with her husband; *N. A. R. vol.* 2, *page* 55:—so, a mother convicted of the murder of her infant, impelled by starvation and extreme distress, which was considered a sufficient ground for mitigation of punishment; *N. A. R. vol.* 4, *page* 311. Where a mother in a sudden fit of passion threw her child into a well, by which it was drowned, she was sentenced in consideration of the sudden impulse under which she acted and the absence of all malice towards the child, to imprisonment for 10 years; *N. A. R. vol.* 2, *page* 375. Where the prisoner was convicted on his own confession of the murder of his master's child without any discoverable motive, but the bones which he pointed out could not be identified, it was held that this was not a sufficient finding of the body, and he was sentenced to imprisonment for life in Allipore jail; *N. A. R. vol.* 2, *page* 82:—so, where the prisoner was convicted, on strong presumption, of having murdered a boy, 12 years of age, for the sake of some rupees which were on his person, and the police officers had not seen the dead body, though certain witnesses deposed to having seen it with the throat cut, capital punishment was remitted, and he was sentenced to imprisonment for life in the Allipore jail; *N. A. R. vol.* 3, *page* 8.

Sentence of imprisonment for life.

By a mother acting on sudden impulse.

Discovery of bones not sufficient finding of body.

Body not found.

2930. Prisoner convicted on circumstantial evidence of the murder of his master, and his master's wife and mother, for their property, and sentenced to death; *N. A. R. vol.* 1, *page* 165:—so, in a similar case, when the futwa convicted of privity only; *N. A. R. vol.* 3, *page* 19:—so, the dying declaration before the neighbours of one of the two murdered individuals, the fact of his having quitted the house in which the murdered persons were by his own acknowledgment at the time of the murder, of his not returning home till the succeeding night, of his clothes being found stained with blood along with a bloody dao a short distance from the house, and of his own statement being disproved by circumstances, were held to furnish sufficient presumptive proof on which to found a capital sentence against the prisoner, as guilty of the murders charged, although he took away none of the property, the acquiring possession of which was the only apparent motive for the crime; *N. A. R. vol.* 3, *page* 131. Where the wounded person survived the infliction of the wounds for two months, but the intent to kill was clearly proved, the principal was sentenced to death, and another as accessary after the fact, and for receiving the stolen property, to imprisonment for 7 years; *N. A. R. vol.* 4, *page* 243. Where the apparent motive of the murder was to obtain property, and the prisoner alleged that he had committed it on the promise of a reward of 40 rupees, he was capitally sentenced; *N. A. R. vol.* 1, *page* 90:—so, in other cases of murder to obtain money or goods; *N. A. R. vol.* 1, *pages* 34, 137; *vol.* 2, *pages* 104, 257;—and in prosecution of robbery or theft; *N. A. R.*

Murder to obtain property.

Sentence of death.

Sentence of imprisonment for life.

vol. 1, *pages* 54, 202; *vol.* 2, *page* 103; *vol.* 4, *page* 169. Sentence of imprisonment for life was passed in two cases merely on account of a difference of opinion among the judges of the nizamut adawlut; *N. A. R. vol.* 2, *pages* 384, *and* 485:—and where the proof was only presumptive; *N. A. R. vol.* 3, *pages* 11, *and* 227. Where the prisoner was one of the rude race of people in the north of Cachar, he was sentenced to transportation for life; *N. A. R. vol.* 5, *page* 8. One prisoner convicted of being an accomplice in the murder was sentenced to imprisonment for life, two others of being accessaries after the fact and receiving part of the stolen property to imprisonment for 14 years, and two of being accessaries after the fact and concealing their knowledge thereof to imprisonment for one year; *N. A. R. vol.* 5, *page* 186. Two prisoners convicted on their mofussil confessions, supported by strong circumstantial evidence, were sentenced to transportation for life, notwithstanding the verdict of acquittal by the jury; *N. A. R. vol.* 6, *page* 14. On conviction of privity to murder and theft and receiving the ornaments of the deceased, the prisoner was sentenced to 7 years' imprisonment: *N. A. R. vol.* 4, *page* 275.

Accessaries.

Convicted in spite of acquittal by jury

Privity.

Acquittals on charge of murder.

Where the general nature of the evidence was insufficient, or contradictory; and what amount of circumstantial evidence has in particular cases been considered insufficient.

2931. The following cases are reported in which the prisoners have been acquitted from the insufficiency or contradictory nature of the evidence; *N. A. R. vol.* 1, *pages* 2, 170; *vol.* 2, *pages* 158, 194, 318, 345; *vol.* 3, *pages* 3, 192; *vol.* 4, *pages* 60, 228, 248, 287:—so, where there was not sufficient proof to fix the act on either of the prisoners, though, from circumstances connected with the case, not a doubt existed but that one of them must have perpetrated the deed; *N. A. R. vol.* 1, *page* 267:—so, where the deceased was found hanging to a beam in her house in the middle of the day, with evident marks of having been ravished and strangled, the only evidence against the prisoner being, that he was seen running from the house shortly before in a state of agitation; *N. A. R. vol.* 2, *page* 460:—so, where the evidence against the deceased consisted chiefly in his being the last person seen in company of the deceased, whom he had an obvious interest in surviving for the sake of certain property which he would succeed to; *N. A. R. vol.* 3, *page* 27:—so, when the circumstantial evidence consisted of enmity between the prisoners and deceased; threats used by the prisoners; and concealment of and denial of the possession of any weapon; *N. A. R. vol.* 2, *page* 271:—so, though marks of strangulation and other indications of violence were found on the body, the prisoner's contradictory statements, first that she had run away, and then that she had hanged herself, were not deemed sufficient evidence for conviction; *N. A. R. vol.* 2, *page* 350:—so, where the prisoner pointed out the spot where he had buried his bastard child, after having denied all knowledge of it; *N. A. R. vol.* 3, *page* 47:—so, the dying declaration of the murdered person, and the circumstances of a weapon being found near the prisoner exactly corresponding with the wound inflicted on the deceased, were held insufficient for conviction; *N. A. R. vol.* 3, *page* 66:—so, the prisoner's having been indicated by the murdered boy, together with the fact of his having been found near the spot where the boy was lying, his flight from thence on the neighbours coming up, and his accusation when seized of another individual, were not held to constitute sufficient proof of his guilt; *N. A. R. vol.* 3, *page* 143:—so, the circumstance of the prisoner being alone in the house with his wife when she was discovered in a dying state from wounds on her person, was held insufficient to establish the charge against him, though, from the nature and position of the wounds, it was impossible that they could have

been self-inflicted; *N. A. R. vol.* 3, *page* 327:—so, notwithstanding strong presumptive evidence, where the murdered person declared that she did not know who her murderer was; *N. A. R. vol.* 4, *page* 232. The prisoner was acquitted of the murder of a child for the sake of its ornaments, when one of the two witnesses against him was his own wife, and the evidence was otherwise unsatisfactory; *N. A. R. vol.* 3, *page* 10:—so, where the principal witnesses against the prisoner were his wife and a lad 14 years of age, the court acquitted him, adverting to some discrepancies in the evidence of the former and to the youth of the latter; *N. A. R. vol.* 4, *page* 261. It was deemed sufficient ground for acquittal that the witnesses had been harshly treated by the police to force them to give their depositions; *N. A. R. vol.* 5, *page* 81. Two prisoners were acquitted, notwithstanding the confession of No. 2 that he was present when No. 1 committed the murder; the presumption being that the deceased was killed by the villagers, while in the act of committing theft with the prisoners; *N. A. R. vol.* 2, *page* 163.—Where the prisoner concealed a murder perpetrated by his wife, and thus in the strict sense of the word became an accessary after the fact, but nothing else appeared against him, his act was deemed the result of natural feeling, and he was acquitted; *N. A. R. vol.* 1, *page* 107.—Where the prisoners pursued two boys who had allowed their cattle to stray on the prisoner's fields, and the boys fled towards the river in which they were found drowned the next day, it was held that no crime was established against the prisoners; *N. A. R. vol.* 3, *page* 361.

Husband accessary after the fact to murder committed by wife, not punished.

Accidental death.

2932. In the Mahomedan law there is no allowance made for a person slaying a robber, after he has been taken into safe custody; and such homicide incurs the penalty of wilful murder. Where the prisoner was found guilty of this offence, he was sentenced to imprisonment for life; *N. A. R. vol.* 1, *page* 249:—and where previous enmity existed, to death; *N. A. R. vol.* 5, *page* 119:—where the prisoners appeared to have committed the crime through ignorance, they were sentenced according to their respective degrees of guilt to imprisonment for 14, 7, and 5 years; *N. A. R. vol.* 3, *page* 267:—where no intention to kill appeared, the sentence of imprisonment has varied according to the circumstances of the case, from 10 years to 1; *N. A. R. vol.* 2, *pages* 262, 322, 461; *vol.* 4, *page* 38; *vol.* 5, *pages* 122, *and* 142. Where the homicide was committed on the thief resisting and attacking the prisoner, or where the thief was found in the actual commission of the offence and killed on the spot, the prisoner was acquitted; *N. A. R. vol.* 1, *page* 22; *vol.* 4, *page* 197; *vol.* 5, *pages* 44, *and* 150.

Killing thieves.

Convictions, and justificatory plea insufficient.

Homicide held justifiable.

2933. In the reported cases of the murder of persons under the idea that they practised witchcraft, the sentence has varied from imprisonment for life to imprisonment for 7 years; but the reasons which have induced this inequality of punishment are not recorded; *N. A. R. vol.* 2, *pages* 56, 188, 196; *vol.* 3, *page* 102; *vol.* 4, *pages* 128, 221, 224; *vol.* 5, *pages* 19, *and* 35:—where the murder was committed under strong provocation, and the murdered person professed the art of witchcraft in order to extort money, the prisoner was sentenced to imprisonment for only 3 years; *N. A. R. vol.* 1, *page* 318. All these cases, with the exception of the one last quoted, occurred in the least civilized parts of the country, Chota Nagpore, Kumaon, and among the Garrows.

Killing sorcerers.

Where the prisoners were actuated by superstition.

Where the deceased professed witchcraft.

Killing by poison.

Sentence of death.

2934. A prisoner convicted of murder by poison, in revenge for removal from the superintendence of a religious endowment, and to recover possession thereof, was sentenced to death; and three persons convicted of privity to the murder to imprisonment for one year; *N. A. R. vol.* 1, *page* 58. Sentence of death was passed on a prisoner convicted of the murder of a rival wife by poison; *N. A. R. vol.* 2, *page* 347: so, where the prisoner was convicted of the murder by poison of two persons, and endangering the lives of 14 others who partook of the poisoned food, with whom his master was at enmity; *N. A. R. vol.* 1, *page* 334: so, where the prisoner murdered his master by poison apparently with a view of emancipating himself from slavery, to which he had bound himself by a regular deed; *N. A. R. vol.* 2, *page* 19. Where it was clearly shown that the two prisoners administered poison with the intent to kill, but there was a doubt whether the poison actually caused the death, the sentence was for imprisonment for life; *N. A. R. vol.* 2, *page* 156:—so, where a wife mixed some koochla (nux vomica) with her husband's food with intent to kill him, but the husband disliking the taste refused to eat the dinner; *N. A. R. vol.* 4, *page* 123. Where the poisoned food was prepared, but not administered, and the prisoner declared that his object was to produce a temporary derangement of the faculties and not death, he was sentenced to imprisonment for 10 years; *N. A. R. vol.* 2, *page* 281:—where the prisoner, a girl of 12 years of age, was convicted of culpable homicide of her husband by administering poison to him but without intent to kill, she was sentenced to imprisonment for 7 years; *N. A. R. vol.* 3, *page* 236. The prisoner was acquitted, where the evidence was insufficient; *N. A. R. vol.* 2, *page* 213:—where the drug administered was not poison, and the court was not satisfied with the truth of the prisoner's confession before the magistrate, notwithstanding that the futwa convicted her of administering a drug which she conceived to be poison; *N. A. R. vol.* 1, *page* 307:—and where it seemed probable, that the deceased died from excessive drinking rather than that the wine was poisoned; *N. A. R. vol.* 2, *page* 368.

Intent to kill, but homicide not effected.

Without intent to kill.

Acquittal.

Human sacrifice.

2935. Where the prisoners were convicted of wilful murder, under strong grounds for presuming that the murder was intended as a human sacrifice, they were sentenced to death; *N. A. R. vol.* 1, *page* 13; *vol.* 4, *page* 117. Four Garrows, convicted of murdering two women for the purpose of obtaining their heads, which were required by one of their countrymen for some superstitious ceremony, were sentenced to death; *N. A. R. vol.* 5, *page* 164. Three prisoners convicted, on violent presumption, of the murder of a boy for the performance of an incantation, were sentenced to imprisonment for life; *N. A. R. vol.* 3, *page* 209. Three inhabitants of the Jyntea territory, convicted of having, at the instigation of the brother-in-law of the raja of that country, forcibly seized a boy in the British territory, for the purpose of offering him up as a sacrifice to the Hindoo idol Kalee, the boy being rescued, were sentenced to imprisonment in banishment for 14 years; *N. A. R. vol.* 2, *page* 108.

Female infanticide.

2936. A prisoner, convicted of destroying his infant daughter, was sentenced to death; but as it appeared that the proclamation for restraining the murder of new-born children, directed by sect. 11, Reg. III. 1804, had not been published in the pergunnah in which the prisoner resided, and as the magistrate had but recently interfered in the police of the

pergunnah, so that it was not improbable that he might have been ignorant of the prohibition of the British government, the court recommended government to pardon him, which was sanctioned; *N. A. R. vol.* 1, *page* 209. A prisoner charged with the murder of his female infant was acquitted, as the only evidence against him was his confession, which he stated to be untrue and obtained by violence, and as there was no proof of the birth of the child; *N. A. R. vol.* 1, *page* 143.

Killing or exposure of infants.

2937. On conviction of destroying, or exposing with intent to destroy, new-born illegitimate children, the mother has been sentenced to imprisonment for life, *N. A. R. vol.* 2, *pages* 161 *and* 220; *and vol.* 4, *page* 108; or to imprisonment for 7 years; *N. A. R. vol.* 1, *page* 363; *vol.* 3, *page* 83; *and vol.* 5, *page* 177:—but the reports of these cases are not sufficiently full to show the grounds of distinction in awarding punishment. Where the prisoner had made a previous attempt upon her infant's life, and it was afterwards found drowned under circumstances bearing strongly against the prisoner, but she herself reported its death to the police, and denied having caused it, and no witness saw it accomplished, she was acquitted; *N. A. R. vol.* 3, *page* 225.

Procuring abortion.

Where the means used caused the death of the woman

2938. Two prisoners were convicted of administering drugs to a pregnant woman with a view to procure abortion in consequence of which she was delivered of a perfectly formed child born dead, and of having conveyed away the woman, so that no intelligence had been since received regarding her; and were sentenced to imprisonment for life; another prisoner convicted of aiding and abetting in the above crime was sentenced to imprisonment for 7 years; the midwife who delivered her died during the trial; *N. A. R. vol.* 3, *page* 269. A woman convicted of causing the death of a pregnant woman in an attempt to procure abortion, was sentenced to imprisonment for 7 years; *N. A. R. vol.* 2, *page* 335. Where the prisoner was convicted of taking a potion, when in an advanced state of pregnancy, with the intention of causing abortion, in consequence of which the abortive birth of a child was occasioned, she was sentenced to imprisonment for two years: in this case the futwas found her guilty also of causing the death of her infant subsequently by exposure, but this was held to be a conviction of a greater offence than that charged; and that it was an essentially distinct charge, and therefore might still be proceeded on, if thought proper, notwithstanding the charge and conviction of procuring abortion; *N. A. R. vol.* 3, *page* 56. Where the prisoner was convicted of causing drugs to be administered to a pregnant woman for the purpose of procuring abortion, but there was no proof that her death was occasioned by the drugs, he was sentenced to imprisonment for 6 months; *N. A. R. vol.* 4, *page* 29. Where the prisoner, not quick with child, was convicted of destroying the fœtus in her womb, the court deemed the 6 months' imprisonment, which she had undergone, a sufficient punishment; *N. A. R. vol.* 2, *page* 464.

Where the woman knowingly caused abortion in herself.

Punishment for attempt.

Where the fœtus was not quick.

Culpable homicide.

Of wife; on account of her loss of honor or of her adulteries;

2939. Where the prisoner put his wife to death at her own request, in consequence of her loss of honor from having been violated by several persons, it was held to be culpable homicide, and he was sentenced to imprisonment for 5 years; *N. A. R. vol.* 1, *page* 1:—where the prisoner confessed that he found his wife in adultery, and in a rage went to a near neighbour's house for a razor, with which he cut her throat, he was sentenced to

imprisonment for 7 years; *N. A. R. vol.* 2, *page* 235:—where the prisoner provoked by his wife's adultery and personal abuse killed her by striking her on the head with the handle of a hatchet, and afterwards in jail made a violent assault on her paramour, he was sentenced to imprisonment for life; *N. A. R. vol.* 1, *page* 5. On conviction of aggravated culpable homicide from beating his wife, 12 years of age, severely with a large piece of wood and kicking her, for running away to her father's house, of which she died the next morning, the prisoner was sentenced to imprisonment in banishment for 14 years; *N. A. R. vol.* 3, *page* 329:—the same sentence was passed, when the prisoner strangled his wife under the impulse of sudden passion from her continued refusal to have connection with him; *N. A. R. vol.* 3, *page* 275:—and so, when in sudden anger on slight provocation the prisoner gave his wife a severe blow on the head from the branch of a tree of which she died ten days after; *N. A. R. vol.* 3, *page* 360:—and so, when the prisoner killed his wife by one blow of a club which fractured her skull, from some unknown motive; *N. A. R. vol.* 4, *page* 225:—where the prisoner, in sudden anger from refusal of his wife to return home with him from her uncle's house, snatched up two bamboos and beat her severely, of which she died the following night, he was sentenced to imprisonment for 5 years; *N. A. R. vol.* 1, *page* 231. A prisoner convicted of culpable homicide of his wife in the attempt to consummate marriage, for which she was too young, probably from making use of some instrument, (the offence being punishable under the Mahomedan law, if death be the result of the first attempt at connexion) was sentenced to 14 years' imprisonment; *N. A. R. vol.* 6, *page* 29.

for running away;

for refusal of marital rights;

in anger;

in attempt to consummate marriage.

In revenge for adultery with wife, or attempt to commit such.

2940. A prisoner, convicted solely on his own confession of having killed his nephew, who had committed adultery with his wife, was sentenced to 7 years' imprisonment, as, though he confessed that the act was premeditated, yet the means used were only two blows with a moderate sized stick, and the meeting with the deceased was accidental; *N. A. R. vol.* 2, *page* 32:—so, where the prisoner, in sudden irritation, killed with one blow of a moosul a person whom he believed to have carried on a criminal intercourse with his wife, and who came to his house notwithstanding the prohibition of the prisoner; *N. A. R. vol.* 3, *page* 351;—where the deceased was found in the prisoner's house at night with an adulterous intent. notwithstanding previous warning, and they beat him to death with their sticks, the intent to kill not being apparent, they were sentenced to imprisonment for 5 years; *N. A. R. vol.* 2, *page* 395;—in a similar case the prisoners were sentenced to imprisonment for 3 years, 2 years, and 1 year respectively; *N. A. R. vol* 4, *page* 279. Where the deceased detected the prisoner in criminal intercourse with his wife, and immediately killed his wife and attacked the prisoner, who killed him in self-defence, the sentence passed was imprisonment for 2 years; *N. A. R. vol.* 1, *page* 39. Where the prisoner, a peon in the salt department, killed a person, whom he had illegally arrested, on his attempt to escape, he was sentenced to imprisonment for 14 years; *N. A. R. vol.* 3, *page* 222;—in a similar case, when the arrest was equally illegal, but the blow given to prevent escape was evidently not intended to produce death, the prisoner was sentenced to imprisonment for 2 years; *N. A. R. vol.* 1, *page* 321. Where a person illegally arrested, without judicial process, killed the person who sought to detain him, he was sentenced to imprisonment for 2 years; *N. A. R. vol.* 1, *page* 69. Where the first prisoner was

By a person illegally arresting, to prevent escape.

By a person illegally arrested.

convicted of killing a police officer and wounding another person, under circumstances of extreme provocation, and the other was convicted of aiding and abetting (the prisoners, their father, and brothers having been apprehended by the police officers on a false charge of highway robbery, the father killed and one of the brothers wounded by the police), the first prisoner was sentenced to imprisonment for 3, and the second for 2 years; *N. A. R. vol.* 3, *page* 54. A sepoy convicted of shooting a person in a disturbance in a village, in consequence of the deceased coming forward to rescue his father, whom the prisoner with other sepoys had illegally seized, was sentenced to imprisonment for life; *N. A. R. vol.* 2, *page* 413. Where one of the prisoners attempted to force the deceased to carry a bundle, and he resisted, and the villagers endeavoured to rescue him, and in the scuffle which ensued the other prisoner killed the deceased with his sword, the latter was sentenced to imprisonment for 7 years, and the former for 2 years and stripes; *N. A. R. vol.* 1, *page* 63:—where the prisoner seized the deceased to act as a begar, and he in endeavouring to escape accidentally fell into a well and was drowned, the prisoner was sentenced to 5 years' imprisonment; *N. A. R. vol.* 2, *page* 396:—where a sepoy beat a man with a stick and his fists so as to cause his death for refusing to do service as a begar, he was sentenced to imprisonment for 3 years; *N. A. R. vol.* 2, *page* 469. Where a sepoy seized a villager to act as a guide, and the other villagers came to his rescue, and the sepoy fired among the crowd whereby a boy was killed, he was sentenced to imprisonment for 5 years; *N. A. R. vol.* 2, *page* 334;—in a similar case, the prisoner was sentenced to imprisonment for 3 years; *N. A. R. vol.* 1, *page* 209. Where it appeared from circumstantial evidence that his wife had died from the effects of violence used towards her by the prisoner, he was sentenced to imprisonment for 2 years; *N. A. R. vol.* 1, *page* 174. Where the prisoner killed the deceased in a dispute by firing at him a gun loaded with seed in which a single shot appeared to have been mixed, he was sentenced to imprisonment for 7 years; *N. A. R. vol.* 5, *page* 6.

In disturbances caused by attempts to exact forced service from individuals.

2941. Where the prisoner in sudden anger and on provocation killed a woman with whom he had cohabited, and afterwards despoiled her of the jewels which she wore and left the body, he was sentenced to imprisonment for life; *N. A. R. vol.* 2, *page* 200:—so, where the prisoner in sudden anger and on provocation knelt down by the side of a boy who was asleep and deliberately killed him; *N. A. R. vol.* 3, *page* 62:—where the prisoner killed a woman by striking her on the head with an iron-bound lattee under momentary irritation, he was sentenced to imprisonment for 14 years; *N. A. R. vol.* 3, *page* 265:—so, where the prisoner killed the deceased by a blow from a club on sudden irritation at being accused of cattle-stealing; *N. A. R. vol.* 3, *page* 289:—where the prisoner in sudden anger killed a man by a kick on the testicles, he was sentenced to 10 years' imprisonment; *N. A. R. vol.* 4, *page* 37. Where the prisoner killed an old man in a quarrel by striking him with his fists, he was sentenced to imprisonment for 7 years; *N. A. R. vol.* 3, *page* 304;—where the prisoner in the heat of a quarrel ran into her house, and having brought out a bytee struck an old woman with the edge of it over her nose and killed her on the spot, she was sentenced to imprisonment for 7 years; *N. A. R. vol.* 4, *page* 143;—so, where the prisoner in sudden anger ran after the deceased and struck him twice with a sword, of which wounds he died; *N. A. R. vol.* 1, *page* 115; *vol.* 4, *page* 82;—so, where

In sudden anger, or momentary irritation:—sentence of imprisonment for life,

for 14 years;

for 10 years;

for 7 years;

the prisoner in a dispute struck the deceased with a club on the head, which caused his death sixteen days afterwards; *N. A. R. vol.* 2, *page* 187;—so, where the prisoner in a violent dispute struck the deceased three blows on the head and mouth, of which she died almost immediately; *N. A. R. vol.* 1, *page* 112;—so, where the prisoner killed the deceased in sudden irritation during sickness; *N. A. R. vol.* 3, *page* 176:—so, where the prisoner killed his own child in a fit of ungovernable passion at ill-treatment and oppression by a third party; *N. A. R. vol.* 1, *page* 177.—Where the prisoner in sudden passion, but without any intention to kill her, squeezed his wife's throat so violently as to occasion her death almost immediately, he was sentenced to imprisonment for 5 years; *N. A. R. vol.* 1, *page* 110;—so, where the prisoner, who was bed-ridden, threw a stool at his wife, which struck her on the head and killed her on the spot; *N. A. R. vol.* 2, *page* 155;—so, where a zumeendar required the services of the prisoners, his tenants, and they abused him, and he held up his shoe as if to strike them, and they committed an assault upon him which occasioned his death; *N. A. R. vol.* 2, *page* 268;—so, where the prisoner killed by a blow on the head a person with whom his master was struggling; *N. A. R. vol.* 2, *page* 307. Where in a sudden quarrel and family affray the prisoner struck the deceased and he died from the injuries received, the sentence was imprisonment for 4 years; *N. A. R. vol.* 5, *page* 28. In other cases where the homicide has occurred in a sudden quarrel the prisoners have been sentenced to imprisonment for one year, or 6, or 3 months; *N. A. R. vol.* 2, *page* 106: *vol.* 1, *pages* 328, *and* 193.

for 5 years;

for 4 years;

for less periods.

In a sudden quarrel in which the person killed was the aggressor.

2942. Where the deceased in a sudden quarrel struck the prisoner, and the latter seized a club and killed him by repeated blows, he was sentenced to imprisonment for life; *N. A. R. vol.* 4, *page* 150:—where a wife on a quarrel wounded her husband, and the latter seizing the knife stabbed her so that she died of the wound, he was sentenced to imprisonment for 14 years; *N. A. R. vol.* 3, *page* 207:—where the deceased allowed the cattle he was tending to stray into the prisoner's field, and the latter struck him with a club, which killed him on the spot, imprisonment for 7 years was considered a sufficient punishment; *N. A. R. vol.* 3, *page* 75;—so, where the deceased, an old woman, first struck the prisoner, and he struck her two violent blows with a heavy log of wood which killed her; *N. A. R. vol.* 3, *page* 363. In other cases where the homicide has occurred in sudden quarrel on provocation given by the deceased, the sentence has been for 5 years; *N. A. R. vol.* 1, *pages* 49, *and* 136; *vol.* 2, *page* 256; *vol.* 4, *page* 14;—for 4 years; *N. A. R. vol.* 3, *page* 291;—for 3 years; *N. A. R. vol.* 1, *page* 290;—for 2 years; *N. A. R. vol.* 2, *page* 423;—and for one year; *N. A. R. vol.* 1, *page* 31; *and vol.* 3, *page* 300. Where the prisoner on the provocation of abusive language assaulted the deceased with an evident intent to kill, but in sudden heat of blood, he was sentenced to imprisonment for life; and Mr. Macnaghten adds in a note; "Under the stated circumstances of this case, it is probable that the prisoner, having on provocation from words only assaulted and wounded the deceased with a manifest intent to kill him, and having thereby occasioned his death, would, if tried by an English jury, have been convicted of murder. But verbal abuse, which is often of the grossest nature amongst the natives of India, and is extremely offensive, especially to persons of the prisoner's caste, amounts to a high provocation in this country; and it is consonant to the spirit of the English law, as well as to the general prin-

On provocation of abuse.

ciples of justice, to make a distinction of punishment between cases of deliberate murder, and sudden homicide committed in heat of blood;" *N. A. R. vol.* 1, *page* 53. Where the prisoner and deceased met in their way to the house of a woman, with whom they both had a criminal intercourse, and there ensued a quarrel which began in abuse and ended in a mutual struggle in which the deceased was strangled, the prisoner was sentenced to imprisonment for 3 years; *N. A. R. vol.* 1, *page* 123:—where in a quarrel the prisoner and deceased fell to fighting with sticks, and the latter was killed, the former was sentenced to imprisonment for 6 months; *N. A. R. vol.* 1, *page* 160:—where the prisoner, in a quarrel in which he himself was the aggressor, after mutual blows, killed the deceased with his sword, he was sentenced to imprisonment for 7 years; *N. A. R. vol.* 6, *page* 23.

In mutual struggle.

2943. Where there was evidence of previous enmity and intention to assault, but not of intention to kill, the sentence was for imprisonment for life; *N. A. R. vol.* 4, *page* 161; where the prisoners wilfully beat and tortured a boy till he died, and the only palliation was the absence of intent to kill, they were all sentenced to imprisonment in banishment for 14 years; *N. A. R. vol.* 4, *page* 162: in a similar case, where the prisoners waylaid and assaulted the deceased, but without intent to kill, so that he died in three hours, the principal was sentenced to imprisonment for 14 years, and three others for 7 years; *N. A. R. vol.* 5, *page* 63:—so, where the prisoners assaulted and beat the deceased so as to cause his death soon after, in revenge for accusing them of dacoity, but the evidence was insufficient to prove an intent to kill, they were sentenced to imprisonment for 7 years; *N. A. R. vol.* 4, *page* 120. Where the deceased struck the prisoner with a club, and the latter went home (a short distance) for his sword, and returning met the deceased and killed him on the spot, he was sentenced to imprisonment for 5 years; *N. A. R. vol.* 2, *page* 107. Where the prisoner, in revenge for blows over-night, beat the deceased with his fists so as to cause his death, but without intent to kill, he was sentenced to imprisonment for 5 years; *N. A. R. vol.* 4, *page* 40:—where one prisoner struck the deceased with his hand and a stick, so as to cause death the following day, and the other instigated and commanded the assault, the former was sentenced to imprisonment for 5 years, and the latter for 3 years; *N. A. R. vol.* 4, *page* 129.

In prosecution of previous enmity.

2944. A Mahomedan was convicted of burying his mother-in-law, who was leprous, at her own request, without ascertaining that she was dead; and was cautioned and released in consideration of his having been 6 months in confinement: a proclamation was at the same time issued warning the Mahomedans that they would be subject to punishment if guilty of such offence; *N. A. R. vol.* 1, *page* 218. A Hindoo at the request of his father, who was afflicted with leprosy, filled a pit with fuel to which he set fire, and the father threw himself into it and was killed; but the prisoner was released without punishment, as he appeared to be justified under the tenets of the Hindoo law; *N. A R. vol.* 1, *page* 220. For the same reason a Hindoo who assisted his father, suffering from leprosy, to drown himself was released; *N. A. R. vol.* 1, *page* 292. A woman and her husband were both afflicted with leprosy; the latter died, and the former throwing herself into his grave was buried with him by the prisoners at her own desire; they were sentenced to 6 months' imprisonment; *N. A. R. vol.* 2, *page* 18. Two prisoners convicted of assisting in the

Assisting in suicide.
To relieve persons suffering from leprosy.

suicide of their uncle, a leper, were released in consideration of the confinement which they had already undergone; *N. A. R. vol.* 3, *page* 127. Two prisoners charged with aiding and abetting a third person (who died while under trial) in burying alive his brother, a leper, at his own request, were acquitted and discharged as it was not proved that they were aware of his intention; *N. A. R. vol.* 3, *page* 139. Six prisoners were convicted of assisting in burning to death a woman, apparently with her own consent, for the purpose of intimidating and preventing persons deputed to execute a decree of court from performing that duty: one, her husband, was sentenced to imprisonment for life, and the others for 7 years; *N. A. R. vol.* 2, *page* 310.

In revenge for injuries sustained from another person.

Erroneous homicide.

Sentence of death;

2945. The prisoner desiring to kill the wife of a person, with whom she had an illicit connexion, gave her two poisoned loaves, but a third person eating thereof died in consequence, and the prisoner was sentenced to death; *N. A. R. vol.* 1, *page* 287. A prisoner, convicted of the murder of a man in the intent to kill a woman, with whom he had maintained a criminal intercourse, but who had deserted him for the deceased, was sentenced to death; *N. A. R. vol.* 1, *page* 309. Where the prisoner in a sudden fit of anger aimed a blow at one person, which fell upon a child, concealed at the time from the view of the prisoner, and instantly caused its death, he was sentenced to imprisonment for 14 years; *N. A. R. vol.* 5, *page* 96. Where the prisoner found his wife in bed with another man, and killed her on the spot, and while endeavouring to strike the paramour killed his mother and brother who interposed, he was sentenced to imprisonment for 2 years; the killing the wife was justifiable under the Mahomedan law from the presumption of adultery arising from situation; and the killing the others was considered erroneous homicide; *N. A. R. vol.* 1, *page* 151. Where the prisoner threw a piece of burnt brick at the prosecutor, and it struck the deceased on the breast and occasioned her immediate death, it appeared that he had no intention to kill, and that the act was not likely to cause death, and he was sentenced to imprisonment for 6 months; *N. A. R. vol.* 1, *page* 52.

of imprisonment for 14 years;

on provocation, for 2 years;

where the act was unlikely to cause death, for 6 months.

Accidental homicide.

2946. Where the prisoner killed the deceased at night mistaking him for a dog or jackall, and after endeavouring in vain to resuscitate him concealed the body, he was released in consideration of the period during which he had already suffered imprisonment; *N. A. R. vol.* 2, *page* 67. Where the prisoner accidentally shot the deceased while firing at a wild hog, he was acquitted and released; *N. A. R. vol.* 4, *page* 1.

Homicide by compulsion.

2947. Where the prisoner killed the deceased by order of his master, and under fear of immediate death in case of refusal, the futwa acquitted him, and he was released. *N. A. R. vol.* 1, *page* 101.

Justifiable homicide.

From adultery of wife;

2948. It has been held justifiable homicide, where a woman in defence of her honor killed a man who was entering her house at night with the intent to have forcible connexion with her; *N. A. R. vol.* 3, *page* 233:—where the prisoner finding a man in the act of adultery with his wife killed either one or both; *N. A. R. vol.* 1, *page* 130; *vol.* 2, *pages* 171, 408, 456; *vol.* 3, *page* 169; *vol.* 4, *page* 168; *and vol.* 5, *page* 158;—where the prisoner, detecting his wife in the act of adultery at a short distance from his own house, went back to his house for a sword, with which he returned, and finding the parties still

in the position in which he left them, wounded the adulterer and a woman who acted as procuress, and killed his wife; *N. A. R. vol.* 5, *page* 90:—so, where the prisoner found the deceased in a situation which warranted the presumption that he was attempting to commit adultery with his wife; *N. A. R. vol.* 1, *page* 156:—so, where the prisoner killed a person whom he detected in the act of adultery with his wife, though he was aware of his wife's elopement and of her living in a state of adultery with the deceased, but had done every thing in his power to dissuade her from a continuance of the criminal intercourse; *N. A. R. vol.* 1, *page* 298:—but in a later case of the same nature it has been held that the prisoner was not justified, the apparent difference being that he had in a certain degree connived at the intercourse by permitting the deceased to live under the same roof with his wife, and he was sentenced to transportation for life; *N. A. R. vol.* 6, *page* 27:—so, a prisoner was held not justified, who lay in wait and killed the deceased while sleeping with his wife, after she had with his knowledge been living with the deceased for thirteen years; and he was sentenced to death; *N. A. R. vol.* 1, *page* 389:—so, the finding a man at night prosecuting an adulterous intercourse with his wife, was not held sufficient to justify the prisoner in homicide with deliberate cruelty and torture, however, it might excuse acts committed in the irritation and excitement of the moment; and he was sentenced to imprisonment for life; *N. A. R. vol.* 4, *page* 292:—so, where the prisoner, aware of his wife's intrigue, watched her, and having armed himself for the express purpose of killing one or both followed her, and, finding her in the act of adultery, wounded both her and her paramour, and after they had separated pursued and again wounded both of them successively, while endeavouring to escape, it was held that these circumstances of aggravation diminished the justification, and he was sentenced to imprisonment for 2 years and a fine of 100 rupees in lieu of labor; *N. A. R. vol.* 5, *page* 65:—and so, where the prisoner killed the deceased under strong grounds of provocation for the violation of his wife, though he did not find him in the act, the court held that he was not completely justified, but that the imprisonment already undergone was fully adequate to his offence; *N. A. R. vol.* 5, *page* 71. Two prisoners were held to be justified in killing the deceased under sudden irritation at finding him in bed with their sister; *N. A. R. vol.* 1, *page* 74:—so, when the prisoner killed his sister and her paramour in the act of adultery; *N. A. R. vol.* 2, *page* 48:—but both of these trials were held before the enactment of sect. 5, Reg. IV. 1822*. A prisoner was held justified who, under the influence of gross provocation, in consequence of dishonor done to his family by the forcible violation of his sister by the deceased, wounded him with a sword, which caused his death a fortnight after; *N. A. R. vol.* 5, *page* 99:—but where a brother finding a man in the house of his sister under very strong circumstances of suspicion that he had criminal intercourse with her, kept guard at the door, while a distant relation who was with him entered the house wherein the deceased had secreted himself and deliberately cut his throat, it was held that the admission of justification was barred by the deliberate manner of the murder, and by the neglect of their power to seize him; and the relation was sentenced to imprisonment for life, and the brother for 7 years; *N. A. R. vol.* 4, *page* 130:—and where the prisoner finding his brother's wife in the act of adultery, during the absence of his brother, seized a sword and killed her, it was held that he was not justified, but capital punishment was remitted, and he was sentenced to imprisonment for life;

and in what cases of that nature not justified.

From adultery or violation of sister;

* *v. para.* 2885.

and in what cases of that nature not justified.

N. A. R. vol. 2, *page* 419:—where the prisoner, finding the deceased in the attempt to violate his sister-in-law by force, beat him so severely with his club that he died after three days, he was sentenced to imprisonment for one year; *N. A. R. vol.* 2, *page* 491. A prisoner, convicted of killing the deceased while attempting to ravish his master's wife, was released without punishment, as were also two persons who concealed the body; *N. A. R. vol.* 1, *page* 240. Where the prisoners killed a burkundaz, after he and another burkundaz had in cold blood put to death a villager whom they had arrested and while they were under no reasonable apprehension of a rescue, the homicide was deemed justifiable; *N. A. R. vol.* 2, *page* 327. In a case of assault and wounding, referred to the nizamut adawlut by the judge of circuit on a doubt as to whether certain of the prisoners, who were sepoys, were not justified, as they acted under the orders of a jemadar, their superior officer; the case was returned for sentence, and the judge informed that though the fact noticed might operate in mitigation of punishment, it could not justify gross infraction of the peace; *N. A. R. vol.* 3, *page* 128. Where the prisoner killed the deceased in self-defence, in an attack on him by the deceased occasioned by jealousy, the homicide was considered justifiable; *N. A. R. vol.* 4, *page* 132. For cases in which the homicide of persons found in the act of committing theft has been held justifiable, *see para.* 2932.

In the rescue of his master's wife from an attempt to ravish her.

In retaliation of a murder.

Sepoys acting under order of jemadar not justified.

In self-defence.

Of thieves.

SECTION V.

OF THUGGEE.

Language to be used in the proceedings of thuggee cases.

2949. All proceedings connected with cases of thuggee are to be written in Oordoo Hindoostance; but the depositions and confessions of thugs should be taken down in the language best understood by them, and the general superintendent of operations for the suppression of thuggee should be furnished with translations of any documents, written in the Bengallee or other language, which he may require. C. O. Nos. 241 of vol. 2, and 16 of vol. 3.

Punishment for belonging to a gang of thugs.

2950. Whoever is proved to have belonged, either before or after the passing of this Act, to any gang of thugs, either within or without the territories of the East India Company, is to be punished with imprisonment for life with hard labor.(a) Act XXX. 1836, sect. 1.

Sentence of imprisonment for life to include transportation for life.

2951. Within the territories subject to the government of the East India Company, whenever any court not included under the provisions of Act XXIV. 1843 sentences any offender to imprisonment for life under the above provisions, it is at the same time to sentence such offender to transportation beyond sea for life, unless there should be special reasons inducing the court to think such prisoner not a proper subject for transportation, which special reasons the court is required to record. Act X. 1847.

(a) Before the passing of this Act, the nizamut adawlut held that the charge of being a thug was not a specific charge on which the prisoner could be punished. N. A. R. vol. 1, page 239.

2952. Any person charged with murder by thuggee, or with the offence of having belonged to a gang of thugs, made punishable by Act XXX. 1836, may be committed by any magistrate or joint magistrate within the territories of the East India Company, for trial before any criminal court competent to try such person on such charge. Act XVIII. 1837.

Persons charged with murder by thuggee, or belonging to a gang of thugs, may be committed by any magistrate.

2953. Every person accused of the offence made punishable by this Act, may be tried by any court which would have been competent to try him, if his offence had been committed within the zillah where that court sits, any thing to the contrary in any regulation contained notwithstanding. Act XXX. 1836, sect. 2.

Persons charged with belonging to a gang of thugs may be tried by any sessions court;

2954. The above provision does not authorize the session judge, without first having obtained the authority of government, to try prisoners charged with specific acts of murder by thuggee and plunder of property, when such acts have been committed beyond the territories of the East India Company. Const. No. 1213.

but not for specific acts of thuggee committed without the Company's territories.

2955. Any person accused of the offence of murder by thuggee, or of the offence of unlawfully and knowingly receiving or buying property, stolen or plundered by thuggee, may be tried by any court which would have been competent to try him if his offence had been committed within the zillah where that court sits, anything contained in any regulation or regulations to the contrary notwithstanding. Act XVIII. 1839.

Persons accused of murder by thuggee, or receiving property stolen by thuggee, may be tried by any sessions court.

2956. Under the above provisions the appointment of a special session judge, for the trial of cases of thuggee, does not bar the jurisdiction of the ordinary sessions courts in cases of that nature. At the same time, the session judges are required to abstain from trying any commitments made by the assistants to the general superintendent for the suppression of thuggee, when a session judge has been specially appointed for that purpose. N. A. R. vol. 5, page 89. C. O. No. 11 of vol. 3.

The appointment of a special judge does not bar the jurisdiction of ordinary courts.

2957. No court is, on a trial of any person accused of the offence made punishable by this Act (*para.* 2953), to require any futwa from any law officer. Act XXX. 1836, sect. 3.

Futwa not to be taken on charge of belonging to a gang of thugs.

2958. But the above provisions do not authorize a session judge to dispense with a futwa on the trial of a prisoner charged with specific acts of murder and thuggee; unless the prisoner be tried under the provisions of Reg. VI. 1832, *i. e.* with the aid of a punchaet, assessors, or a jury. Const. No. 1074.

But futwa must be taken on charge of specific acts of murder and thuggee.

2959. A magistrate (or joint-magistrate, or deputy superintendent for the suppression of thuggee vested with the powers of a joint-magistrate) is authorized to offer mercy, in the name of the government, to any thug from whom he has reason to expect that useful information may be procured, on condition that he makes a full and ingenuous confession. But the promise which he is authorized to make is not a promise of entire pardon, for government will not consent to let any such offenders loose on society, however long the period of their confinement may have been, however unexceptionable their demeanour during that confinement may have been, or whatever may have been the value of the information given by them. The magistrate is in no case therefore, without the special permission of government, to hold out to any thug any hope that he will ever be set at liberty. The mercy which a magistrate is authorized to promise extends only to exemption

Rules under which a promise of a qualified pardon may be made to thugs on condition of becoming approvers; but such pardon is only to exempt from capital punishment and from transportation.

from capital punishment and transportation, and to such indulgences in confinement as may be compatible with the safe keeping of the prisoner. Every promise of this sort which a magistrate gives, the government holds itself bound to perform, even though it should appear that in giving such a promise he has not exercised a sound discretion. Such promises may be made either to persons who have been convicted, or to persons who have not yet been tried: and in the former case the punishment will, on the report of the magistrate that the convict has made a confession which he considers as full and ingenuous, be commuted by government according to the engagements which he may have made: but, as nothing short of a sentence pronounced by a court of justice and recorded on the proceedings of that court can be sufficient ground for detaining any person in perpetual imprisonment, every promise of mercy made to a thug, who has not already been convicted, must be followed up by his regular trial and conviction. The magistrate is, in the first instance, to place on record a faithful narrative of the prisoner's life of crime, noting every thuggee in which he has been employed, the names of the thugs who have been engaged in each expedition, their respective crimes and occupations in each journey, and generally to enter into as full a detail as possible, informing the person who offers himself as an approver, that for any wilful omission on his part he will forfeit the qualified pardon held out to him: after this unreserved confession the magistrate is to examine a few thug approvers as to his being a real thug, and is then to commit him for trial before the session judge on the charge of having been guilty of the offence made punishable by Act XXX. 1836, explaining to him that if he pleads guilty to that minor offence, he will not be put on his trial for any capital crime which he may have committed as a thug. His conviction will under such circumstances be a matter of course; it will give scarcely any trouble to the court by which he may be tried; it will under Act XIX. 1837* leave him a competent witness; and he will be detained for life in confinement under an authority which can never be questioned, and in a strictly regular manner. C. O. No. 247 of vol. 2.

And every approver must be committed for trial and convicted of having belonged to a gang of thugs, in order to ensure the legality of his detention and imprisonment for life.

* *v. para.* 388.

The offer and acceptance of pardon by the approver must be affixed to the record of each trial.

2960. There are no particular rules for the trial of thug prisoners under the provisions of Act XXX. 1836; but the session judge is to be careful to affix to the record of each trial the tender of exemption from the punishment of death and transportation beyond seas, which the magistrate will have made to the prisoner, and the prisoner's acceptance thereof. C. O. No. 246 of vol. 2.

Police officers to give every assistance to the officers of the thuggee department.

2961. Magistrates are to require their police officers always to exert themselves most particularly, on the receipt of descriptive rolls of thugs from the officers of the thuggee department, for the purpose of their apprehension, &c.; and any neglect or inattention to the requisitions of those officers on the part of a police officer will be considered as a very serious offence, rendering him liable to removal from office. C. O. Sup. Pol. *L. P.* No. 15 of 1840.

Precedent of trial.

2962. Three prisoners convicted of murder by thuggee were sentenced to suffer death; four others, convicted of assisting in the murder by holding the feet of the murdered persons, to imprisonment in transportation for life; and the remaining prisoners, as associates and accomplices, to imprisonment for life in banishment. N. A. R. vol. 3, page 1.

SECTION VI.

OF SUTTEE.

Suttees are illegal.

2963. The practice of suttee, or of burning or burying alive the widows of Hindoos, is declared illegal, and punishable by the criminal courts. Reg. XVII. 1829, sect. 2.

All landholders are declared responsible for immediate information of intended suttees.

2964. All zumeendars, talookdars, or other proprietors of land, whether malguzaree or lakhiraj; all sudder farmers and under-renters of land of every description; all dependent talookdars; all naibs and other local agents; all native officers employed in the collection of the revenue and rents of lands on the part of government, or the court of wards; and all munduls or other head men of villages; are especially accountable for the immediate communication to the officers of the nearest police station of any intended sacrifice of the nature described in the foregoing section; and any zumeendar, or other description of persons above noticed, to whom such responsibility is declared to attach, who is convicted of wilfully neglecting or delaying to furnish the information above required, is liable to be fined by the magistrate or joint-magistrate in any sum not exceeding 200 rupees, and in default of payment to be confined for any period of imprisonment not exceeding 6 months. Reg. XVII. 1829, sect. 3, cl. 1.

Penalty in cases of neglect.

Police to report cases of such neglect.

2965. Police officers are to report to the magistrate any omission, or unnecessary delay, on the part of the persons above noticed, in furnishing the promptest information regarding any such intended sacrifice. C. O. No. 43 of vol. 2.

Police darogahs how to act on receiving intelligence of intended suttee.

2966. Immediately on receiving intelligence that the sacrifice, declared illegal by this regulation, is likely to occur, the police darogah is either to repair in person to the spot, or to depute his mohurrir or jemadar, accompanied by one or more burkundazes of the Hindoo religion; and it is the duty of the police officers to announce to the persons assembled for the performance of the ceremony that it is illegal, and to endeavour to prevail on them to disperse; explaining to them that, in the event of their persisting in it, they will involve themselves in a crime, and become subject to punishment by the criminal courts. Should the parties assembled proceed, in defiance of these remonstrances, to carry the ceremony into effect, it is the duty of the police officers to use all lawful means in their power to prevent the sacrifice from taking place, and to apprehend the principal persons aiding and abetting in the performance of it; and in the event of the police officers being unable to apprehend them, they are to endeavour to ascertain their names and places of abode, and are immediately to communicate the whole of the particulars to the magistrate for his orders. Reg. XVII. 1829, sect. 3, cl. 2.

Darogah to report if he does not proceed himself; or to explain cause of delay if the police do not arrive in time.

2967. When the darogah deputes his mohurrir or jemadar to proceed to the spot, he is immediately to report to the magistrate the cause which has prevented his going in person; and in any instance in which the sacrifice has commenced, or has been completed, prior to the arrival of the police, a minute report of the circumstances which have operated to prevent their early arrival must be submitted to the magistrate. In giving effect to the above provisions, the police officers are directed to employ every means of dissuasion

And police officers to associate respect-

able Hindoos with themselves.

and remonstrance, to endeavour to associate with themselves any respectable Hindoos in persuading the parties concerned to desist from the sacrifice, and to use all patience and forbearance in the exercise of the duty prescribed. C. O. No. 43 of vol. 2.

Police officers how to act when they do not hear of a suttee until after it has taken place.

2968. Should intelligence of a sacrifice declared illegal by this regulation, not reach the police officers until after it has actually taken place, or should the sacrifice have been carried into effect before their arrival at the spot, they are nevertheless to institute a full enquiry into the circumstances of the case in like manner as on all other occasions of unnatural death, and to report them for the information and orders of the magistrate to whom they are subordinate. Reg. XVII. 1829, sect. 3, cl. 3.

In such case they cannot apprehend the persons implicated.

2969. Police officers arriving at the spot after the completion of the suttee, are not authorized to take parties into custody before instituting enquiries to ascertain who have aided in the performance of the sacrifice; they should merely make the enquiry and report the result to the magistrate, as directed above. Const. No. 598.

Force is not to be employed by police officers to prevent a suttee until mildness has proved ineffectual.

Prisoners how to be treated.

2970. Police officers are to use all care and discretion in giving effect to these orders; and are in each case to be held bound to show that every means of mildness was resorted to, before recourse was had to any exercise of authority. They are in no case to use any duress towards any persons apprehended under these rules; but are to treat them with every indulgence, and in sending them to the magistrate are to allow them every facility not inconsistent with their safe custody.(a) But these instructions are not to be understood as prohibiting the use of force in the event of an attempt to persist in performing the ceremony after due warning. C. O. No. 43 of vol. 2. Const. No. 749.

Magistrate how to proceed on receiving report.

2971. On the receipt of the reports required to be made by the police darogahs, under the foregoing provisions, the magistrate of the jurisdiction, in which the sacrifice has taken place, is to enquire into the circumstances of the case, and is to adopt the necessary measures for bringing the parties concerned in promoting it to trial before the sessions court. Reg. XVII. 1829, sect. 4, cl. 1.

Persons convicted of aiding and abetting in suttee, liable to what punishment.

2972. All persons convicted of aiding and abetting in the sacrifice of a Hindoo widow by burning or burying her alive, whether the sacrifice be voluntary on her part or not, are to be deemed guilty of culpable homicide, and are liable to punishment by fine, or by imprisonment, or by both fine and imprisonment, at the discretion of the sessions court, according to the nature and circumstances of the case and the degree of guilt established against the offender; nor is it to be held to be any plea of justification, that he or she was desired by the party sacrificed to assist in putting her to death. Reg. XVII. 1829, sect. 4, cl. 2.

Labor may be adjudged.

2973. As the crime of aiding and abetting in a suttee is expressly declared by the above provision to be culpable homicide, conviction of which latter offence includes liability to labor, the same penalty is awardable in the former case also. [This supersedes Const. No. 1125.] C. O. No. 70 of vol. 3.

(a) The rules of this circular were drawn up at the desire of the governor general in order to allay, as much as possible, the popular agitation, which the suppression of suttees was expected to arouse, when it was felt that "great allowance should be made for the feelings and prejudices of the people." It would seem therefore unnecessary now to act upon these rules very strictly, as there appears no reason why suttee should not be treated at present as any other case of culpable homicide.

2974. Persons committed to take their trial before the sessions court, for the offence above mentioned, are to be admitted to bail or not at the discretion of the magistrate, subject to the general rules in force in regard to the admission of bail. Reg. XVII. 1829, sect. 4, cl. 3.

The prisoners may be admitted to bail.

2975. With the exception of aggravated cases, in which recourse has been had to stupefaction or violence, the magistrate is enjoined to abstain from using irons, handcuffs, or other unnecessary duress towards any persons apprehended under these rules; and in any case deemed not bailable, the prisoners are invariably to be confined in the civil jail, and never in the criminal jail.(a) C. O. No. 43 of vol. 2.

Prisoners not admitted to bail, how to be treated.

2976. Nothing contained in this regulation is to be construed to preclude the nizamut adawlut from passing sentence of death on persons convicted of using violence or compulsion, or of having assisted in burning or burying alive a Hindoo widow, while laboring under a state of intoxication or stupefaction, or other cause impeding the exercise of her free-will, when, from the aggravated nature of the offence proved against the prisoner, the court may see no circumstances to render him or her a proper object of mercy. Reg. XVII. 1829, sect. 5.

The nizamut adawlut may pass sentence of death in certain cases.

2977. Three prisoners convicted of aiding and abetting in a suttee were sentenced, two as the relations of the widow to imprisonment for one year, and the third for 6 months.(b) N. A. R. vol. 4, page 308.

Precedent of trial.

CHAPTER IV.

OF THEFT OF THE PERSON.

SECTION I.

OF PERSONS MISSING.

2978. Where the prisoner was convicted of wilful murder on his own confession, and pointed out a corpse as that of the murdered person which was, however, in such a state of decomposition that it could not be recognized, it was held that absence of proof as to the identity of the body was not sufficient to bar a capital sentence, and he was sentenced to

In cases of murder, when the body has not been found, the prisoner has sometimes been sentenced to death;

(a) See preceding note.

(b) The above-noted case occurred in 1834, and is the only one reported since the enactment of Reg. XVII. 1829. In the reports of illegal suttees, for which the aiders and abettors were brought to trial previously, the sentence was never more severe than imprisonment for 3 years; N. A. R. vol. 2, pages 179, 274, 279, 283, 286, 320, 391, and 392; and vol. 3, page 229: except where force was used to the widow to compel the sacrifice, in which case the sentence was for imprisonment for 5 years; N. A. R. vol. 2, page 91; and vol. 3, page 31: and in a case where the prisoner was sentenced to 7 years' imprisonment for assisting his daughter to burn herself with the corpse of her brother; N. A. R. vol 2, page 246.

death; *N. A. R. vol.* 2, *page* 104:—so, where no body was found, but the prisoner confessed to the murder, and there were marks of blood, and of the rolling or struggling of a body on the spot pointed out by the prisoner as that on which he killed the deceased, he was sentenced capitally; *N. A. R. vol.* 2, *page* 257. So, where the murder was clearly established against the prisoners, they were sentenced to death, although the body of the deceased was never found; *N. A. R. vol.* 3, *page* 175. But it has been held more frequently that a revocable sentence should be passed when, although the fact of the murder was fully proved, the body could not be found; and the prisoners were accordingly sentenced to imprisonment for life; *N. A. R. vol.* 3, *page* 339; *vol.* 4, *pages* 91, 140, 148, *and* 319. Where the sentence would have been imprisonment for life if the body had been found, its absence was not admitted in mitigation; *N. A. R. vol.* 4, *pages* 138, *and* 145. And sentence of imprisonment for life has been passed, where the actual death of the person supposed to be murdered was uncertain, no body being found, and the prisoners were sentenced only for the intent to kill; *N. A. R. vol.* 1, *page* 17; *and vol.* 3, *page* 332:—so, where there was no proof of the murder except that the prisoner confessed to having witnessed it, and to having some of the money plundered from the deceased, and the body could not be found; *N. A. R. vol.* 3, *page* 43:—so, where the prisoner was an accomplice in a river dacoity, and the missing person was presumed to have been drowned in endeavouring to escape from the robbers; *N. A. R. vol.* 1, *page* 204:—so, where the prisoners were convicted of embezzling goods in a fraudulent transaction, and there were strong grounds for presuming that they had made away with the owner and two other persons who were missing; *N. A. R. vol.* 1, *page* 324.—Where the murder was not proved, but the prisoners were convicted of severely maltreating a person since missing and of seizing his muth and property, they were sentenced to imprisonment for 14 and 7 years respectively; *N. A. R. vol.* 1, *page* 121.—When the prisoners have been convicted on violent presumption of having made away with persons, of whom nothing had been heard since they were seen in the prisoner's company, it has been usual to pass sentence of imprisonment until the missing person be produced, or it be proved that he died by means not implicating the prisoner; *N. A. R. vol.* 1, *pages* 226, 305; *vol.* 2, *pages* 46, 84; *vol.* 4, *pages* 47 *and* 327;—so, in a similar case, where the finding a scull, recognized as that of the missing boy by a peculiarity in the jaw-bone, was held not to be sufficient proof of identity to prove the actual murder, and consequently to warrant a capital sentence; *N. A. R. vol.* 3, *page* 122;—and where the presumptive evidence was very strong that the prisoner had murdered the missing girl, he was sentenced to imprisonment for life with the express proviso that the sentence would be altered if the missing girl were found or her death accounted for to the exculpation of the prisoner; *N. A. R. vol.* 4, *page* 136:—but in later cases it has been held objectionable to pass such conditional sentence, as it tended to throw a doubt on the evidence on which the sentence was grounded; and the prisoners were therefore sentenced at once to such terms of imprisonment as appeared suited to their respective degrees of guilt; *N. A. R. vol.* 5, *pages* 21, 147. [A conditional sentence of this nature is said to be objectionable when there is no presumption that the missing person has been murdered; *see para.* 2984; but a conditional sentence of definite duration has sometimes been passed, when there was no presumption of murder, with a view to encourage

but generally to imprisonment for life:

So, where the fact of the murder was not clearly proved.

Conditional sentence of imprisonment until the missing persons were found;

but the practice of conditional sentences has been lately held to be objectionable.

the production of the missing person; *see para:* 2985.] Where the prisoners were convicted of beating a person since missing, but the injury inflicted was not deemed by the court sufficient to cause death, they were sentenced to imprisonment for one year; *N. A. R. vol.* 2, *page* 305. The fact that the missing persons had embarked with their property in the prisoners' boat, and had not been heard of since last seen in their company, was not considered evidence sufficient to warrant a sentence of conditional imprisonment as above, although the prisoners could bring no evidence to substantiate their assertion that the missing persons left their boat at a particular place of their own accord; and they were acquitted; *N. A. R. vol.* 2, *page* 336.

Case of acquittal for want of evidence.

SECTION II.

OF ABDUCTION.

2979. If any person amenable to the jurisdiction of the zillah and city courts is convicted before a magistrate, or joint magistrate, of the offence of enticing and taking away, or causing to be enticed and taken away, a married woman living under the protection of her husband, or of any person having the care of her in his behalf; or of enticing and taking away, or causing to be enticed and taken away, an unmarried female under the age of maturity, viz. fifteen years, and living with her parents or other legal guardians, or any persons acting in their behalf; for the purpose of rendering such married woman, or unmarried female minor, a prostitute or concubine, or otherwise disposing of her in an unlawful manner, without the consent of the husband, parent, or other guardian, of the woman or minor thus disposed of; the person so convicted is liable to a sentence of fine and imprisonment, to such extent as may appear adequate to the circumstances of the case, and does not exceed the powers vested in the magistrates by sect 19, Reg. IX. 1807, viz. imprisonment for 6 months, and a fine not exceeding 200 rupees, commutable if not paid to a further period of imprisonment not exceeding 6 months. If in any instance the offender appears to merit a more severe punishment, he is to be committed for trial before the sessions court; and the provisions of sect. 6, Reg. XVII. 1817 are applicable to all such commitments [*i. e.* the futwa of the law officer, before whom the trial is held, is to declare only whether the prisoner is legally convicted, or if not whether there is strong ground of presumption, arising from his free confession, or from credible testimony, or from circumstantial evidence, that he is guilty of the crime charged against him: and if the futwa so given declares the prisoner legally convicted, or that there is strong presumption of his guilt, and the session judge before whom the trial is held concurs in the conviction of the prisoner or in the presumption of his guilt, so as to render him a proper object of punishment, and the circumstances of the case do not appear to call for a more severe punishment than what the sessions courts are authorized to adjudge under cl. 7, sect. 2, Reg. LIII. 1803,* the judge is to sentence the prisoner to suffer such punishment as is adequate to his guilt and the nature of the offence, not exceeding corporal punishment and imprisonment with hard labor for the term of 7 years]. Reg. VII. 1819, sect. 2.

Persons guilty of enticing, or of causing to be enticed from their homes, married women, or unmarried female minors, liable to what punishment by order of magistrate.

and by order of session judge

* *v. p ra* 888.

Power of assistant.

2980. Assistants with special powers are competent to dispose of such cases. C. O. No. 6, May 21, 1847.

Sentence under the above rule does not bar a civil suit for damages.

2981. A suit for the recovery of damages in a civil court can be legally sustained against a party, who has already been punished for abduction by a sentence of a criminal court. Const. No. 1251.

Precedents of trial.

2982. A prisoner convicted (before the enactment of the above regulation) of the forcible abduction of a girl, aged 16, was sentenced to imprisonment for one year, and at the expiration of that period to be further imprisoned until he should produce the missing girl, or account satisfactorily for her non-appearance. In this case the prisoner had married the elder sister, and on her death wished to take the younger for his wife; and on the mother's refusal to consent committed the outrage for which he was tried. N. A. R. vol. 1, page 332.

2983. A woman was convicted of inveigling the daughter of the prosecutor from his house with jewels, to accomplish which object she and the daughter administered deleterious drugs to the prosecutor and his family: the woman was sentenced to 7, and the daughter to 5 years' imprisonment: and two men who aided and abetted in the inveigling were sentenced, one to 30 stripes and 5 years' and the other to 20 stripes and 3 years' imprisonment. N. A. R. vol. 4, page 84.

SECTION III.

OF CHILD-STEALING.

Precedents of cases: attended with death;

2984. Two prisoners convicted of secretly getting possession of a girl, 8 years of age, and afterwards from fear of discovery deserting her in such a manner as to cause her death; there being also a strong presumption that she had been murdered, and that they were concerned in it; were sentenced to imprisonment for life; *N. A. R. vol.* 2, *page* 389.

with selling the children;

Seven prisoners were convicted of stealing and selling a child, who was never recovered; and two of them of a second offence of the same nature, in which case however the child was recovered: in the first case, there being no sufficient ground for supposing that the child had been murdered, the court preferred a definite to an indefinite period of imprisonment, as suggested by the law officers (until the girl should be restored), and sentenced the prisoners to imprisonment for 7 years: in the second case, the two prisoners previously convicted were sentenced to 2 years' additional imprisonment, and a third as an accomplice for the single offence to imprisonment for 2 years: there were grounds for believing that all the prisoners convicted in the first case had for some time made a trade of stealing and selling female children; *N. A. R. vol.* 2, *page* 66. A woman convicted in two cases of child-stealing was sentenced by the session judge to imprisonment for 4 years; but the nizamut adawlut called for the proceedings and enhanced the term of imprisonment to 10 years; *N. A. R. vol.* 5, *page* 57:—so, where two prisoners were convicted of enticing away

a boy and selling him into slavery, and the session judge sentenced them to imprisonment for one year in addition to the confinement which they had already undergone, the court called for the case, and sentenced them to imprisonment for 7 years; *N. A. R. vol.* 5, *page* 30. A prisoner convicted of administering poisonous [or intoxicating] drugs to a whole family with a view to carry off one of the children, aged 11 years, while they were in a state of insensibility, was sentenced to imprisonment for 7 years; *N. A. R. vol.* 3, *page* 21. A prisoner convicted of having kidnapped a girl 8 years of age, and of offering to sell her, was sentenced to 30 stripes and imprisonment for 7 years; and another, convicted of concealing his knowledge of the kidnapping and of aiding in the intended sale, to imprisonment for 2 years; *N. A. R. vol.* 1, *page* 337.

with administering deleterious drugs.

Privity.

2985. A prisoner convicted of carrying away and selling a girl 5 years of age, was sentenced to 4 years' imprisonment, and a further period of 3 years, unless she should furnish information which might lead to the discovery of the missing child; *N. A. R. vol.* 2, *page* 308:—and it was held to be within the competence of a session judge to pass such conditional sentence, where the whole term of imprisonment does not exceed the period of 7 years; *N. A. R. vol.* 2, *page* 447.

Conditional sentence in such cases for a definite period.

2986. Four prisoners convicted of aiding and abetting in the illegal detention of five girls, between 15 and 18 years of age, with intent to dispose of them in an unlawful manner,—though it does not appear by what means they fell into the power of the prisoners, who carried them about the country in a boat and endeavoured to sell them for the purposes of prostitution,—were sentenced to imprisonment for 5 years. *N. A. R. vol.* 6, *page* 4.

Attempt to sell girls for the purposes of prostitution.

2987. An inhabitant of Lahore carried away a child without the knowledge of his parents, inhabitants of the same state, and settled in the British territories, in which he was accused by the parents and proved to have committed the crime. Held, that though the prisoner could not be tried in our courts for the child-stealing, as the act was committed in a foreign territory, yet he might be committed on the minor charge of retaining in his possession a child knowing him to have been stolen. Const. No. 1043.

Case of child-stealing in a foreign territory, and bringing him into the British provinces.

SECTION IV.

OF SLAVERY.

2988. The importation of slaves whether by land or by sea into the places immediately dependent on the presidency of Fort William, is strictly prohibited; and any person infringing this prohibition is liable to be prosecuted and punished for the offence by the courts of criminal judicature. Reg. X. 1811, sect. 2.

The importation of slaves is a penal offence;

2989. Any person, who is convicted of the offence of importing slaves into the British territories, is to be sentenced to imprisonment for the period of 6 months, and to pay a fine to government, according to his circumstances in life, not exceeding however the sum of

punishable by imprisonment and fine.

200 rupees, commutable, if not duly discharged, to imprisonment for the further period of 6 months on the expiration of the former part of the sentence. Reg. X. 1811, sect. 3.

Disposal of persons so imported as slaves.

2990. Persons imported as slaves into the British territories are liable to be discharged, or sent back to their friends and connexions in the country from which they have been imported, according as it appears most advisable to the magistrate by whom the decision on the case is passed. Reg. X. 1811, sect. 4.

The above provisions are applicable only to imported slaves.

2991. The above provisions are applicable only to the importation of slaves for the purpose of being sold, given away, or otherwise disposed of; and cannot be applied to the sale of slaves not imported into the British territories. C. O. No. 141 of vol. 1. Const. No. 99.

All slaves imported into a British province from any British or foreign province, are declared free.

2992. All slaves who subsequently to the enactment of the above provisions have been or may hereafter be removed by sea or land for purposes of traffic from any country, territory, or province, British or foreign, into any province now dependent, or that may become hereafter dependent on the presidency of Fort William, subsequently to the date on which it has or may become so dependent; or who have been or may be so removed from one province that now is or may hereafter become dependent, subsequently to the dates on which they respectively have or may become dependent; are hereby declared free.(a) Reg. III. 1832, sect. 2, cl. 1.

Persons concerned in the sale or purchase of slaves so removed, are punishable by fine and imprisonment.

2993. All persons concerned in the sale or purchase as a slave of any man, woman, or children, so removed, knowing him or her to have been so removed, on conviction thereof before a magistrate, are liable to be sentenced to imprisonment for the period of 6 months, and to pay a fine to government according to their circumstances in life not exceeding the sum of 200 rupees, commutable, if not duly discharged, to imprisonment for the further period of 6 months on the expiration of the former part of the sentence. Reg. III. 1832, sect. 2, cl. 2.

This does not prohibit the transfer of slaves for money, if not removed from one territory to another.

2994. Reg. III. 1832 does not prohibit the transfer of slaves for money, or other consideration, between persons residing within the British territories; it merely prohibits the removal of them for the purpose of traffic from one territory, British or foreign, to any other territory dependent on this presidency: consequently those slaves only are entitled, under its provisions, to their liberty, who have been so removed subsequently to the enactment of Reg. X. 1811. Const. No. 955.

Selling free-born persons is an offence.

2995. The selling of free-born persons is prohibited by the Mahomedan law; and persons convicted thereof are liable to discretionary punishment. N. A. R. vol. 6, page 4.

Public officers are not to sell persons or the right to their services.

2996. No public officer is in execution of any decree or order of court, or for the enforcement of any demand of rent or revenue, to sell or cause to be sold any person, or

(a) The preamble thus explains the reasons for this enactment:—"Whereas in consequence of the extension of the possessions held under the presidency of Fort William, subsequent to the enactment of Reg. X. 1811, prohibiting the importation of slaves from foreign countries, a doubt has arisen whether the provisions of that regulation can be held to apply to cases of slaves removed from any part of the British possessions acquired subsequently to the passing of that regulation into any part of those then held under the said presidency: with a view to the removal of any such doubt, and also with a view to the entire prohibition of the removal of slaves for purposes of traffic from one part of the British territories to another, the following rules are enacted, &c."

the right to the compulsory labor or services of any person, on the ground that such person is in a state of slavery. Act V. 1843, sect. 1.

2997. No rights arising out of an alleged property in the person and services of another as a slave are to be enforced by any civil or criminal court or magistrate within the territories of the East India Company.(a) Act V. 1843, sect. 2.

The right to slaves is not to be enforced by the courts.

2998. No person who has acquired property by his own industry, or by the exercise of any art, calling, or profession, or by inheritance, assignment, gift, or bequest, is to be dispossessed of such property or prevented from taking possession thereof on the ground that such person or that the person from whom the property has been derived was a slave. Act V. 1843, sect. 3.

The right to property remains the same though the owner or the person from whom it is derived was a slave.

2999. Any act which would be a penal offence if done to a free man is equally an offence if done to any person on the pretext of his being in a condition of slavery. Act V. 1843, sect. 4.

What is a penal offence if done to a free person, is equally so if done to a slave.

SECTION V.

OF EMIGRANTS.

3000. Every person who makes with any native of India any contract of labor to be performed in any British or foreign colony without the territories of the East India Company; or who knowingly abets or aids any native of India in emigrating from the said territories for the purpose of being employed as a laborer; is liable, on conviction before a magistrate or justice of the peace, to a fine not exceeding 200 rupees for every native so contracted with, aided or abetted; and, in default of payment of such fine, is liable to be imprisoned for a term not exceeding 3 months. Act XIV. 1839, sect 2.

Penalty for contracting with a native to labor in a British or foreign colony, or aiding a native in emigrating for such purpose.

3001. Nothing in this Act contained is to be taken to apply to any native seaman, who of his own free-will contracts to navigate any vessel, or who embarks on board such vessel in pursuance of such contract; or to any person who contracts to serve as a menial servant only, or who embarks as such menial servant. Act XIV. 1839, sect. 3.

The above is not applicable to native seamen or menial servants;

3002. The above Act does not apply to the emigration of natives from the port of Calcutta to the Mauritius; but is in full force in all the other ports of India, and in regard to emigrants from India proceeding to other places than the Mauritius. Act XV. 1842, sect. 1.

or to persons emigrating to Mauritius from Calcutta.

(a) This provision repeals Const. No. 887, which declares that a magistrate has no authority to interfere to deliver to the petitioner a child whom he alleges to be his absconded slave;—and so, also, Const. No. 939 which directs, that, on the complaint of a party alleged to be a slave that he is detained by violence, the enquiry should in the first instance be entered into in the criminal department, and, if violence be proved, redress should be afforded him, and the opposite party referred to a civil action to prove his claim.

Magistrates to look closely after the duffadars employed by the emigration agents, who carry a certain kind of perwannah in order to give the appearance of authority to their proceedings.

3003. The duffadars employed by emigration agents are provided with a species of perwannah by them, addressed in English to the judges, magistrates, and collectors of the zillahs, but in the native languages to the darogahs of police, zumeendars and others, for the purpose of securing them from interruption: as it is extremely probable that such perwannahs are represented by these men to the ignorant people as official documents giving them some degree of authority in their proceedings, magistrates are required to be on the alert to detect and bring to punishment any duffadar or other person who, being in possession of a document of this nature, may practise fraud, extortion, or oppression of any kind upon the people. They should also discourage the use of these papers or perwannahs, and keep so strict an eye upon the movements of those who bear them, that they may be made aware of their producing no real advantage, but on the contrary exposing them to suspicion and distrust. C. O. Sup. Pol. *L. P.* No. 25 of 1843.

CHAPTER V.

OF FIUL-I-SHUNEEA AND ZINA.

SECTION I.

OF RAPE.(a)

Case may be taken up, though no complaint is preferred.

3004. There is nothing in the regulations which prohibits a magistrate from taking cognizance of cases of rape in which no complaint is preferred; but he should exercise this power with the utmost discretion and with due regard to the feelings of the injured party and her family. Const. No. 670.

(a) In English law, an infant under the age of fourteen years is presumed by law unable to commit a rape; but he may be a principal in the second degree, as aiding and assisting, if it appear by the circumstances of the case that he had a mischievous intent. Nor is evidence admissible against him to show that in point of fact he has attained the full state of puberty, and was capable of committing the crime. A husband also cannot be guilty of a rape upon his wife; but he may be guilty as a principal in assisting another person to commit a rape upon her: and in such case the wife is a competent witness against her husband. It must be proved that the offence was committed against the will of the woman, which of course implies violence; but it is no excuse that she yielded at last, if her consent was forced from her by fear of death or duress; and so, it is rape if the connexion took place when she was in a state of insensibility from liquor, having been made drunk by the prisoner, though the liquor was given only for the purpose of exciting her. Nor is it any excuse that she consented after the fact; or that she was a common strumpet, for she is still under the protection of the law, and may not be forced; or that she consented at first, if the offence was afterwards committed by force or against her will; or that she was a concubine to the ravisher, for a woman may forsake her unlawful course of life, and the law will not presume her incapable of amendment. All these circumstances, however, are material to be left to the jury in favor of the accused, more especially in doubtful cases, and where the woman's testimony is not corroborated by other evidence. It seems doubtful whether the carnal knowledge of a woman, under circumstances which induce her to

Cognizable by police officer.

3005. A charge of rape may be legally referred to police officers for investigation, or may be preferred directly at the thana. Const. Nos. 1174 and 1365.

Razeenamah inadmissible. If the parties refuse, the goverment pleader is to prosecute.

3006. A razeenamah is not admissible in a case of rape, as that offence is described in cl. 3, sect. 6, Reg. XVII. 1817 as a heinous crime: and if the woman, on whom the violence has been committed, and her husband refuse to prosecute, the government pleader should be appointed to conduct the prosecution. Const. No. 403. N. A. R. vol. 3, page 127.

So, where the woman is a minor and therefore unable to prosecute.

3007. Where the only prosecutor was the ravished girl, who was an infant and whose examination was taken without oath, the nizamut adawlut held that the trial was informal, and returned the proceedings with instructions that the vakeel of government should be directed to stand forward as prosecutor. N. A. R. vol. 3, page 170.

Futwa to be given in trials for rape.

3008. In trials before the sessions courts for rape, the futwa of the law officer of the sessions court, before whom the trial is held, is to declare only whether the prisoner is legally convicted, or if not whether there be strong ground of presumption, arising from his free confession, or from credible testimony, or from circumstantial evidence, that he is guilty of the crime charged against him. Reg. XVII. 1817, sect. 6, cl. 1.

suppose it is her husband, amounts to a rape; and where the indictment has been for rape under such circumstances, the prisoners have been convicted of an assault under a special statute, which enacts, that on the trial of any person for any felony, where the crime charged includes an assault against the person, the prisoner may be acquitted of the felony and punished for the assault. To constitute the offence of rape there must be a penetration; and any, the slightest penetration will be sufficient; even where the hymen has not been ruptured, "but where that which is so very near to the entrance has not been ruptured, it is very difficult to come to the conclusion that there has been penetration so as to sustain a charge of rape." But it is not necessary to prove emission; and where the circumstances are proved to have been such that no emission did or could take place, the offence is complete if the penetration is proved. The party ravished, says Lord Hale, may give evidence upon oath, and is in law a competent witness; but the credibility of her testimony, and how far she is to be believed, must be left to the jury, and is more or less credible according to the circumstances of fact that concur in that testimony. For instance, if the witness be of good fame, if she presently discovered the offence, and made pursuit after the offender, showed circumstances and signs of the injury; if the place, in which the fact was done, was remote from people, inhabitants, or passengers; if the offender fled for it; these and the like are concurring evidences to give greater probability to her testimony, when proved by others as well as herself. On the other hand, if she be of evil fame, and stand unsupported by the testimony of others; if she concealed the injury for any considerable time, after she had an opportunity to complain; if the place, where the fact was alleged to have been committed were such that it was probable she might have been heard by others, and she made no outcry; such circumstances carry a strong, but not a conclusive, presumption that her testimony is false. The defendant may give evidence of the woman's notoriously bad character for want of chastity or common decency; or that she had before been connected with himself; but he cannot give evidence of any other particular facts to impeach her chastity: but if, on cross-examination, she deny having had intercourse with other men than the prisoner, those men may be called to contradict her. So, what she herself said so recently after the fact as to preclude the possibility of her being practised on, has been holden to be admissible in evidence as a part of the transaction; but the particulars of her complaint are not evidence of the truth of her statement. A strict caution is given by Lord Hale with regard to the evidence for the prosecution in cases of rape; "an accusation easily to be made, and hard to be proved, and harder to be defended by the party accused, though never so innocent." The unlawful and carnal knowledge and abuse of a girl under the age of ten years is felony; and if the girl is above the age of ten and under the age of twelve years, the offence is a misdemeanor; and in these cases it is immaterial whether the act was done with or without the consent of the female. The child herself, however tender her age, if capable of distinguishing between right and wrong, may be examined in proof of the offence; but her declarations are inadmissible; though the fact of her having complained of the injury, recently after its having been received, is evidence in corroboration.—*Roscoe and Archbold.*

The above does not apply to a case of rape attended with robbery.

3009. The above provision, which requires the law officer to declare only whether the prisoner is legally convicted, and to refrain from stating to what punishment the Mahomedan law renders him liable, is not applicable to a case of rape attended with robbery. N. A. R. vol. 2, page 267.

On conviction of rape, the trial is to be referred;

3010. If the prisoner is convicted, or presumed guilty, of the heinous crime of rape, the session judge is not to pass any sentence; but is to refer the trial to the nizamut adawlut, for the sentence of that court, under the general regulations in force. Reg. XVII. 1817, sect. 6, cl. 3.

but not, if the conviction is for the attempt merely.

3011. It is not necessary, under the above provision, to refer a trial for rape to the nizamut adawlut, unless the session judge and his law officer are of opinion that the offence was actually consummated; or unless the judge considers, in the case of an attempt, that the punishment which he is authorized to inflict by cl. 7, sect. 2, Reg. LIII. 1803, viz. imprisonment for 7 years and stripes, is insufficient. N. A. R. vol. 2, page 182.

It is not necessary to a conviction, that the act should be complete.

3012. Where the prisoner was seen in the act of committing a rape and seized in that situation, and the circuit judge referred the case under the idea that an attempt only had been established by the evidence, it was held that the completion of the offence was not necessary to a conviction. N. A. R. vol. 3, page 215.

The consent of a girl 8 years old is immaterial.

3013. It was held that the consent of a girl of the age of eight years was immaterial; and the prisoner was sentenced, on a charge of "illicit carnal knowledge of the prosecutor's daughter," (in consideration of his youth) to 15 stripes and imprisonment for 6 months. N. A. R. vol. 2, page 452.

On charge of rape conviction cannot be had of adultery.

3014. Where the prisoner is tried on a charge of rape, he cannot be convicted of adultery. N. A. R. vol. 5, page 140. This supersedes a former precedent in which the contrary doctrine was held; vol. 2, page 317.

The evidence of the party ravished not sufficient except on oath, or strongly corroborated.

3015. Where the only evidence against the prisoner was that of the girl alleged to have been ravished, and she was too young to be sworn, the court directed his release. N. A. R. vol. 2, page 415. So, where the woman violated was deaf and dumb, and it was not possible to administer an oath to her; the prisoner, though indicated by her as the person who ravished her, was acquitted for want of evidence. N. A. R. vol. 3, page 59. But where the evidence of the ravished girl, aged about nine years, and of another girl of the same age, was corroborated by that of the girl's mother and of others as to the state of her clothes and body, the proof was held sufficient for conviction. N. A. R. vol. 2, page 292. The declaration of the woman, though made almost immediately after the occurrence to her relations and afterwards taken down by the police officers, was held alone insufficient for conviction; N. A. R. vol. 2, page 411: and so, the evidence of the woman on oath corroborated by witnesses whose veracity was doubtful, was considered insufficient to prove the violence, though it might substantiate a charge of adultery. N. A. R. vol. 4, page 35.

Evidence of others insufficient except on oath.

3016. Where there was no evidence to prove the identity of the prisoners but the statements of four children examined without oath, the court returned the proceedings with directions, that such of them as evinced a sense of the obligation of deposing truly, should be sworn to the truth of their depositions. N. A. R. vol. 3, page 194.

3017. When the prisoners were originally tried for highway robbery and acquitted; but, though no charge of rape was preferred against them by the prosecutrix on that occasion, four of them acknowledged themselves and implicated a fifth prisoner, as concerned either as principals or accessaries in a rape on her person; and they were all indicted on these confessions; as no other evidence appeared against them, they were acquitted. N. A. R. vol. 3, page 325.

Where the prisoners confessed, but there was no other evidence, they were acquitted.

3018. The usual sentence in cases of rape appears to have been imprisonment for 7 years, with the addition in some cases of stripes; *N. A. R. vol.* 1, *page* 381; *vol.* 3, *pages* 72, *and* 127. So, where the girl was only nine or ten years of age; *N. A. R. vol.* 1, *page* 212; *vol.* 3, *page* 215; *vol.* 4, *page* 318. Where the girl was only seven years of age, the prisoner was sentenced to 30 stripes and imprisonment in banishment for 10 years; *N. A. R vol.* 2, *page* 267. Where death was the consequence of the rape on a girl of ten years of age, the prisoner was sentenced to imprisonment in banishment for 14 years; *N. A. R. vol.* 4, *page* 73. Where the prisoner was convicted of rape and sentenced to imprisonment for 5 years, two boys who held the woman were sentenced to imprisonment for 6 months and a fine of 20 rupees in lieu of labor; *N. A. R. vol.* 5, *page* 140. A boy, thirteen or fourteen years of age, convicted of rape, was sentenced in consideration of his youth to 3 years' imprisonment; *N. A. R. vol.* 3, *page* 147. Where the prisoner was charged with the rape of a child under 4 years of age, the court viewed it merely as an attempt, and sentenced him to imprisonment for 5 years and stripes; *N. A. R. vol.* 2, *page* 182: and so, where a boy only 10 years old was convicted by the futwa of rape on a girl only three years of age, the court sentenced him as for a misdemeanor to imprisonment for one year; *N. A. R. vol.* 3, *page* 87.

Precedents of convictions: common cases; in a case attended with homicide; accessaries; by a boy; on a child under 4 years of age.

3019. According to Mahomedan law, the consent or refusal of the woman does not alter the nature of the offence in cases of criminal intercourse; and the same fixed penalty must be awarded whether the man has used violence, or has been engaged in an act of simple adultery. The term zina includes adultery, fornication, rape, and incest; and it is only necessary that the act should have been committed by a Mussulman married, sane, free, and of mature age, with a woman in whom the man has no right either by marriage or bondage: the punishment is barred by the existence of any doubt on the question of right, or by any conception in the mind of the accused that the woman was lawful to him, and by his alleging such idea as his excuse. From one definition of whoredom given by the two disciples, it would seem that the offence to be punishable must have been completed(*a*); but in the precedents above quoted the law officers appear to have abandoned this doctrine, or to have compromised it by awarding tazeer in such cases. The evidence of women is inadmissible to establish the charge; and the law is not satisfied with less than the positive testimony of four men, eye-witnesses to the fact, and of ascertained credit; nor is the apparent probity of such witnesses sufficient, but their integrity must be ascertained by the magistrate both by open and secret purgation. If less than four competent witnesses bear evidence, they are liable to the punishment of slander, unless the accused subsequently confess; and so, if one of the witnesses is afterwards found to have been incompetent: and if any witness retract his testimony, it is no longer valid. The confes-

Mahomedan law of zina. Definition.

Evidence requisite to proof.

(*a*) Hed. Trans. vol. 2, page 27.

Confession.

sion requisite to establish the charge, in defect of evidence, must be made by a person of sound mind and mature age four times, at four different sittings of the kazee; who is directed to turn the party away without receiving the confession until the fourth time, and is authorized to suggest a denial, or the mention of circumstances which may exculpate or absolve from the legal penalty. The person who has confessed may also at any time withdraw his confession; even during the infliction of the punishment; and if his sentence be founded upon it, he must be discharged. A confession, though repeated four times, made before any other person than the kazee, is insufficient for conviction: nor can conviction be founded partly on confession, partly on evidence. The stated punishment in a case of zina, in which all the requisites above mentioned are fulfilled, is stoning to death; but where the prisoner, although free, sane, and adult, is not a Mahomedan, or is unmarried, he (or she) is liable to a sentence of one hundred stripes, and (in the case of the man) to temporary banishment or imprisonment at the discretion of the kazee. There are various other minor circumstances noted, which may prevent the conviction or the punishment; but it is unnecessary here to give them in detail; the more especially, as, under the regulations, a conviction ensues without reference to and notwithstanding their existence.(a)

Punishment.

SECTION II.

OF ADULTERY, FORNICATION, AND INCEST.

The charge of adultery must be preferred by the husband of the adulteress;

3020. In cases of adultery, it is requisite for the conviction and punishment of a married woman, that she be prosecuted by her husband; and no other person is to be deemed competent to prosecute, or to prefer the charge against her, in such cases. Reg. XVII. 1817, sect. 6, cl. 4.

as well against the adulterer, as against the wife.

3021. Although the wording of the above provision does not specifically restrict the magistrate in cases of adultery from proceeding against the adulterer, when the husband of the adulteress does not come forward to prosecute, yet by the spirit of the enactment the restriction is equally applicable to such cases. So, neither can the session judge direct the commitment of a woman on a charge of adultery, unless the husband prefers such charge. Const. No. 670. N. A. R. vol. 2, page 421; and vol. 3, page 298.

And the complaint of the husband must distinctly specify the charge of adultery.

3022. Where the husband in his original petition of complaint to the magistrate charged the prisoner with having enticed and taken away his wife with certain ornaments and clothes, and with illegally detaining his wife and property, and prayed for redress under Reg. VII. 1819; and afterwards, on questions by the magistrate, was induced to prefer the higher charge of adultery, and to include the wife in the accusation; and the magistrate then committed the prisoners for trial on the charge of adultery; it was held that the proceedings of the magistrate were irregular and exceptionable, and that the commitment was under the above provisions illegal. N. A. R. vol. 3, page 177.

(a) Hed Trans. book 7. Harington's Analysis, vol. 1, page 266.

3023. Where a prisoner, accused of the murder of his wife, pleaded in justification an improper intimacy between her and another man; and the magistrate swearing him to the truth of the charge proceeded against the alleged paramour for adultery; the nizamut adawlut held that the husband's charge so delivered was sufficient, and that a charge by petition was unnecessary; as the object of Reg. VII. 1811 is merely to restrict the police officers from taking cognizance of such offences, and that object is not in any way defeated by the course pursued in the present instance. Const. No. 1199.

But where the husband brought the charge before the magistrate in the course of a judicial investigation, charge by petition was held unnecessary.

3024. As the crime of incest is of the nature of an offence against society and not of a private wrong, there is no reason why a person guilty of that offence should not be prosecuted on the part of government. The above provisions refer only to adultery, and leave all other kinds of zina, under which term incest is specifically included in the preamble of Reg. XVII. 1817, to be dealt with in the usual method. Const. No. 865.

A charge of incest may be prosecuted on the part of government.

3025. In trials before the sessions courts for adultery, or any other offence within the provisions of the Mahomedan law for cases of zina, and fiul-i-shuneea, the futwa of the law officer, before whom the trial is held, is to declare only whether the prisoner is legally convicted, or if not whether there is strong ground of presumption, arising from his free confession, or from credible testimony, or from circumstantial evidence, that he is guilty of the crime charged against him. Reg. XVII. 1817, sect. 6, cl. 1.

Futwa to be given in such cases.

3026. If the futwa so given declares the prisoner legally convicted, or that there is strong presumption of his guilt, and the session judge, before whom the trial is held, concurs in the conviction of the prisoner, or in the presumption of his guilt, so as to render him a proper object of punishment, and the circumstances of the case do not appear to call for a more severe punishment than what the sessions courts are authorized to adjudge under cl. 7, sect. 2, Reg. LIII. 1803*, the judge is to sentence the prisoner to suffer such punishment as is deemed adequate to his guilt and the nature of the offence, not exceeding corporal punishment and imprisonment with hard labor for the term of seven years. Reg. XVII. 1817, sect. 6, cl. 2.

Sentence to be passed by the sessions court.

* *v. para.* 888.

3027. By the Mahomedan criminal law, persons who harbour adulterers are punishable by acoobut.(a) N. A. R. vol. 2, page 42.

Harbouring adulterers is an offence.

3028. A prisoner convicted of adultery was sentenced to imprisonment for one year with labor. N. A. R. vol. 2, page 317.

Precedent.

(a) This is taken from the marginal note of the report; but it would seem from the body of the report that the law officers convicted the accused of "connivance and sheltering the adulterer and adulteress in their houses," which implies a more active assistance than merely harbouring. The judge of circuit, however, before whom the case was tried, doubted whether this was a conviction of a punishable offence, and made this question one of the points of reference; and as all the prisoners were acquitted by the nizamut adawlut, there is nothing to show in what manner the court viewed the dictum given above. For the Mahomedan law regarding adultery, &c., see para. 3019.

SECTION III.

OF SODOMY.(a)

Such trials need not be referred; but fall within the discretionary sentence which the session judge is competent to pass.

3029. As the regulations prescribe no specific punishment for the offence of sodomy, and as the futwa of the law officers upon conviction is usually one of discretionary punishment by tazeer, it must be considered as falling under the rule laid down in cl. 7, sect. 2, Reg. LIII. 1803. There is no necessity, therefore, for referring such trials to the nizamut adawlut, unless the session judge differs in opinion with his law officer as to the proof of the offence, or deems the punishment of stripes and imprisonment with hard labor for 7 years insufficient. Const. No. 353.

But the trial must be referred, if the judge considers that tusheer should be awarded.

3030. If the session judge is of opinion that tusheer should form part of the sentence, he must refer the case to the nizamut adawlut, as he has no power to award that sentence under the provision for discretionary punishment above quoted. If he is not of that opinion, he may pass sentence without reference. N. A. R. vol. 2, pages 49, and 238.

Mahomedan law.

3031. According to the doctrines of Aboo Yoosuf and Imam Mahomed, the crime of sodomy is classed by the Mahomedan law with that of zina, and is punishable in the same manner; but this opinion is rejected by Aboo Huneefah, who holds that punishment can be awarded only by tazeer: and the two disciples agree, that if the conditions on which alone hudd can be awarded (for which see para. 3019) are not fulfilled, the offender if presumed guilty is liable to discretionary punishment. The above refers to sodomy committed with a man or woman; if committed with a beast, it is admitted by all that hudd is not incurred, and that the punishment is discretionary. The *Jama Sagheer* directs that the penalty inflicted in cases of sodomy should be severe, and that the offender should be confined until he declare his repentance. N. A. R. vol. 1, page 234; and Hedaya, Translations vol. 2, page 26.

Precedents of trials.

3032. A prisoner convicted of forcibly committing sodomy on a boy aged 6 or 7 years, was sentenced to 25 stripes and imprisonment for 10 years; *N. A. R. vol.* 2, *page* 238. Where violence was alleged by the boy, aged 10 years, and the prisoner confessed to committing the offence, but declared that it was done with the boy's consent, he was sentenced to 25 stripes, tusheer, and imprisonment for 7 years; *N. A. R. vol.* 1, *page* 234. Where two prisoners were convicted on their own confession of sodomy, and said that it was their occupation, and a third prisoner was convicted of having instigated and aided in the commission of the offence, they were each sentenced to 30 stripes, tusheer, and imprisonment for 8 years; *N. A. R. vol.* 2, *page* 49.

(a) In English law, the evidence required to prove this offence is the same as in rape, and penetration alone is sufficient: but it is not necessary to prove the offence to have been committed against the consent of the person upon whom it was perpetrated; and both agent and patient (if consenting) are equally guilty. If it be committed on a boy under fourteen years of age, it is felony in the agent only; and the same, it should seem, as to a girl under twelve.

BOOK VI.

OF OFFENCES AGAINST PROPERTY.

CHAPTER I.

OF LARCENY.(a)

SECTION I.

OF ROBBERY BY OPEN VIOLENCE.

Definitions.
Of robbery by open violence.

3033. Any person or persons who, in the day or in the night, go forth with any offensive weapon, or in a gang with or without an offensive weapon, with the criminal intent of committing robbery; and, by force or intimidation rob, or attempt to rob, any

(a) In English law larceny has been defined to be "the wrongful or fraudulent taking and carrying away, by one person, of the mere personal goods of another, from any place, with a felonious intent to convert them to his (the taker's) own use, and make them his own property, without the consent of the owner." The taking and carrying away must be felonious, that is, done *animo furandi*; or, as the civil law expresses it, *lucri causâ:* but it is not necessary that the offender should contemplate any thing in the nature of a pecuniary advantage. The rule with regard to the *lucri causâ* is stated by the criminal law commissioners in the following terms: "the ulterior motive by which the taker is influenced in depriving the owner of his property altogether, whether it be to benefit himself or another, or to injure any one by the taking, is immaterial." The commissioners also give the following definition of a felonious taking: the taking and carrying away are felonious, where the goods are taken against the will of the owner, either in his absence, or in a clandestine manner, or where possession is obtained either by force or surprise, or by any trick, device, or fraudulent expedient, the owner not voluntarily parting with his entire interest in the goods, and where the taker intends in any such case fraudulently to deprive the owner of his entire interest in the property against his will.—Where goods are once taken with a felonious intent, the offence cannot be purged by a restoration of them to the owner. Thus, the prisoner having robbed the prosecutor of a purse, returned it to him, saying, if you value the purse take it, and give me the contents, but before the prosecutor could do this the prisoner was apprehended; the offence was held to be complete by the first taking.

Proof of the taking—what manual taking is required.] In order to constitute the offence of larceny, there must be an actual taking, or severance of the thing, from the possession of the owner; for as every larceny includes a trespass, if the party be not guilty of a trespass in taking the goods, he cannot be guilty of a felony in carrying them away. Still, though there must be a taking, in fact, from the actual or constructive possession of the owner, yet it need not be by the very hand of the party accused. For if he fraudulently procure another, who is himself innocent of any felonious intent, to take the goods for him, it will be the same as if he had taken them himself; as if one procure an infant, within the age of discretion, to steal the goods for him, or if, by fraud or perjury, he get possession of the goods by legal process without title.—The least removing of the thing taken

person or persons on or near a highway; or on a river, lake, or other water; or in or near a city, town, or village; or in any other place whatever; or attack by open violence, and rob, or attempt to rob, any dwelling-house, or other house or building; or any tent, boat, or other receptacle of persons or property in which there is any person or property at the

from the place where it was before, though it is not quite carried off, is a sufficient taking and carrying away to constitute larceny; and upon this ground a guest, who had taken the sheets from his bed with an intent to steal them, and carried them into the hall where he was apprehended, was adjudged guilty of larceny.—So where a person takes a horse in a close, with intent to steal him, and is apprehended before he can get him out of the close.—The prisoner got into a waggon, and taking a parcel of goods which lay in the forepart, had removed it to near the tail of the waggon, when he was apprehended: the twelve judges were unanimously of opinion that, as the prisoner had removed the property from the spot where it was originally placed, with an intent to steal, it was a sufficient *taking* and *carrying away* to constitute the offence.—But where the prisoner had set up a parcel containing linen, which was lying lengthways in a waggon, on one end, for the greater convenience of taking the linen out, and cut the wrapper all the way down for that purpose, but was apprehended before he had taken any thing, all the judges agreed that this was no larceny, although the intention to steal was manifest. For a carrying away, in order to constitute felony, must be a removal of the goods from the place where they were, and the felon must, for the instant at least, have the entire and absolute possession of them.—The following case, though nearly resembling the latter, is distinguished by the circumstance that every part of the property was removed. The prisoner sitting on a coach-box took hold of the upper part of a bag which was in the front boot, and lifted it up from the bottom of the boot on which it rested: he handed the upper part of the bag to a person who stood beside the wheel, and both holding it endeavoured to pull it out, but were prevented by the guard: the prisoner being found guilty, the judges, on a case reserved, were of opinion that the conviction was right, thinking that there was a complete *asportavit* of the bag.—The prisoner was indicted for robbing the prosecutrix of a diamond ear-ring: it appeared that as she was coming out of the opera house, the prisoner snatched at her ear-ring, and tore it from her ear, which bled, and she was much hurt: the ear-ring fell into her hair, where it was found on her return home: on a case reserved, the judges were of opinion that this was a sufficient taking to constitute robbery; it being in the possession of the prisoner for a moment, separated from the owner's person, was sufficient, though he could not retain it, but probably lost it again the same instant that it was taken.—There must, however, be a possession by the party charged, however temporary. The prisoner stopped the prosecutor as he was carrying a feather bed on his shoulders, and told him to lay it down, or he would shoot him: the prosecutor laid the bed down, but before the prisoner could take it up he was apprehended: the judges were of opinion that the offence was not completed.—There must be a severance of the goods from the possession of the owner. The prisoner took a purse out of the pocket of the owner, but the purse being tied to a bunch of keys and the keys remaining in his pocket, and the party being apprehended while they remained in his pocket, it was held no larceny, on the ground that the owner still remained in possession of his purse, and that there was no *asportavit*. So where goods in a shop were tied to a string, which was fastened to one end of the bottom of the counter, and the prisoner took up the goods and carried them towards the door as far as the string would permit, and was then stopped, Eyre B. ruled that there was no severance, and consequently no felony.

Proof of the felonious intent in the taking—goods obtained by false process of law.] Where the possession of goods is obtained from the owner by means of the fraudulent abuse of legal process, the offence will amount to larceny. Thus it is laid down by Lord Hale, that if A has a design to steal the horse of B and enters a plaint of replevin in the sheriff's court for the horse, and gets him delivered to him and rides him away, this is a taking and stealing, because done *in fraudem legis*.

Proof of the felonious intent in the taking—mistake.] The proof that the goods were taken with a felonious intent may be rebutted, by showing that the party charged with the larceny took them by mistake. Thus if the sheep of A stray from his flock into that of B, and the latter by mistake drives them with his own flock, or shears them, that is not felony; but if he knows the sheep to be another's, and marks them with his own mark, that would be evidence of a felony. So, if he appear desirous of concealing the property, or of preventing the inspection of it by the owner, or by any other who might make the discovery, or if, being asked, he deny the having them, although the knowledge be proved; these likewise are circumstances tending to show the felonious intent.

time of such robbery, or of such attempt to rob; are to be deemed guilty of the crime of robbery by open violence (denominated in the Mahomedan law *sarika-i-kobra*, and more commonly *shubkhoonee*, or *dacoity*); and on due conviction thereof, whether by free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstan-

Proof of the felonious intent in the taking—goods taken by trespass.] Although the party may wrongfully take the goods, yet, unless he intended to assume the property in them, and to convert them to his own use, it will amount to a trespass only, and not to a felony. Thus if A leaves his harrow in the field, and B having land in the same field uses the harrow, and having done so returns it to its place, or informs the owner, this is only a trespass.—In the same manner if A takes away the goods of B, openly before him or other persons, this carries with it evidence only of a trespass.—So of a servant riding his master's horse upon his own business.—The two prisoners were charged with stealing two horses: it appeared that they went in the night to an inn kept by the prosecutor, and took a horse and mare from his stable, and rode about thirty-three miles to a place, where they left them in the care of the ostler, stating that they should return: they were apprehended the same day, about fourteen miles from the place: the jury found the prisoners guilty, but added that they were of opinion they merely meant to ride the horses to this place, and to leave them there; but that they had no intention either of returning them, or making any further use of them: the judges, upon this finding, held it to be a trespass only and no larceny: they said there was no intent in the prisoners to change the property, or to make it their own, but only to use it for a special purpose, that is, to save their labour in travelling: the judges agreed that it was a question for the jury, and that if they had found the prisoners guilty generally upon this evidence the verdict could not have been questioned.—So where, upon an indictment for stealing a horse, two saddles, &c., it appeared that the prisoner got into the prosecutor's stables and took away the horse and the other articles altogether; but that when he had got to some distance he turned the horse loose, and proceeded on foot, and attempted to sell the saddles; Garrow B. left it to the jury to say, whether the prisoner had any intention of stealing the horse; for that if he intended to steal the other articles, and only used the horse as a mode of carrying off the other plunder more conveniently, and, as it were, borrowed the horse for the purpose, he would not in point of law be guilty of larceny.—The prosecutor met the prisoner, whom he knew to be a poacher, and seized him; the prisoner getting free, wrested a gun from the hands of the prosecutor, and ran away with it; it was proved that the next day the prisoner said he would sell the gun, and it was never found; Vaughan B. told the jury, upon the trial of the prisoner for stealing the gun that he might imagine that the prosecutor would use the gun so as to endanger his life, and if so, his taking it under that impression would not be felony; but if he took it, intending at the time to dispose of it, it would be felony.

Proof of the felonious intent in the taking—goods taken under a fair claim of right.] If there be any fair claim of property or right in the prisoner, or if it be brought into doubt at all, the court will direct an acquittal. Thus where the owner of land takes a horse damage feasant, or a lord seizes it as an estray, though perhaps without title, yet these circumstances explain the intent, and show that it was not felonious; but these facts may be rebutted, as by showing that the horse was marked, in order to disguise him.—After a seizure of uncustomed goods, several persons broke, at night, into the house where they were deposited, with intent to retake them for the benefit of the former owner; and it was held that this design rebutted the presumption of a felonious intent.

Proof of the felonious intent in the taking—goods procured by finding.] The law respecting the converting of goods found, to the finder's own use, depends upon the question of felonious intention. "If," says Lord Hale, "A finds the purse of B in the highway, and takes and carries it away, and the case has all the circumstances that prove it to be done *animo furandi*, as denying or secreting it, yet it is not felony."—But, he adds, where a man's goods are in such a place, where ordinarily they are or may be lawfully placed, and a person takes them *animo furandi*, it is felony, and the pretence of finding must not excuse.—The distinction, therefore appears to be that where the goods are found in such a situation that the owner may be presumed to have abandoned the property in them, the converting of them will not be a larceny; but if, from circumstances, the finder must infer that there has been no such abandonment, it will be felony to convert them without making due inquiry as to the owner. Thus it is said by Lord Hale, that if a man hides a purse of money in his corn-mow, and his servant, finding it, takes part of it: if, by circumstances, it appear that he knew his master laid it there, it is felony; but, then the circumstances must be pregnant, otherwise it may be reasonably interpreted to be a bare finding, being an unusual place for such a *depositum*.—In the following cases, although, in strictness, the goods were acquired by finding, yet the converting of them was held to be larceny. A gentleman left a trunk in a hackney coach, and the coachman taking it converted it to his own use, this was held to be larceny; for the coachman must have known

tial evidence, are to be adjudged to suffer such of the penalties declared in the next section, as may be applicable to the case, viz. according as the robbery may be with, or without, homicide, wounding, maiming, or other personal injuries; or with or without other circumstances of aggravation. Reg. LIII. 1803, sect. 3, cl. 1.

where he took the gentleman up, and where he set him down, and ought to have restored his trunk to him.—In a similar case, where a box had been left in a coach, and was found at the house of a Jew, where the coachman had uncorded it, and taken out several articles, some of which were missing; the coachman being indicted for larceny, the judge directed the jury that, if they thought that the prisoner had detained the box merely in the hope that a reward would be offered for it, and that he meant then to return it to the owner, they ought to acquit him; but if they thought that he had uncorded the box not merely from curiosity, but with an intention to embezzle any part of its contents, and that he had actually taken any of the goods mentioned in the indictment, it would be matter of legal consideration, whether a person so guilty should not be reached as a felon: the jury having found the prisoner guilty, upon a case reserved, the verdict was approved of by the judges.—The prosecutor, having had his hat knocked off in a quarrel with a third person, the prisoner picked it up, and carried it home: being indicted for larceny, Park J. said, "If a person picks up a thing and knows that he can immediately find the owner, but, instead of restoring it to the owner, converts it to his own use, this is felony."—A pocket-book, containing bank-notes, was found by the prisoner in the highway, and converted by him to his own use; upon which Lawrence J. observed, that if the party finding property in such manner knows the owner of it, or if there be any mark upon it, by which the owner can be ascertained, and the party instead of restoring it, converts it to his own use, such converting will constitute a felonious taking.—And in a similar case, Gibbs C. J. stated to the jury that it was the duty of every man, who found the property of another, to use all diligence to find the owner, and not to conceal the property (which was actually stealing it), and appropriate it to his own use.—Where the prisoner having received a bureau for the purpose of repairing it appropriated 900 guineas, which he found in a secret part of it, it was considered felony.—Evidence to show that the finder endeavoured to discover the true owner, and kept the goods till it might be reasonably supposed that he could not be found; or that he made known his acquisition so that he might make himself responsible for the value, in case he should be called upon by the owner, are circumstances to rebut the presumption of a felonious taking and conversion.—The criminal law commissioners say: "the intention of a person taking property by finding will be felonious or not, according as his conduct, in omitting to use due diligence to discover the owner, or in concealing the property, or in other circumstances, shows that, in the taking, he had or had not a design to deprive the owner altogether of his property."—Where a servant, indicted for stealing bank-notes the property of her master, in his dwelling house, set up in her defence that she found them in the passage, and not knowing to whom they belonged, kept them to see if they were advertised; Park J. held that she ought to have inquired of her master, whether they were his or not, and that not having done so, but having taken them away from the house, she was guilty of larceny.

Proof of the felonious intent in the taking—goods taken by wife—or by wife and a stranger.] If a wife take goods of which the husband is the joint or sole owner, the taking is not larceny, because they are in law but one person, and the wife has a kind of interest in the goods.—Therefore, where the wife of a member of a friendly society, stole money belonging to the society, lodged in a box in her husband's custody, under lock of the stewards of the society, it was held by the judges not to be larceny.—Whether, where a stranger and the wife jointly steal the husband's property, it is larceny in the stranger, has been the subject of contradictory decisions. Where it appeared that the prosecutor's wife had assisted in carrying off the goods, and had continued to cohabit with the prisoner; on objection, the court ruled, that no person could be convicted of a felony in stealing goods when they came into his possession by the delivery of the prosecutor's wife. But in a subsequent case, referred to the opinion of the judges, it was held that where the wife and a stranger steal the goods of the husband, the stranger is guilty of larceny.

Proof of the taking—with reference to the possession of the goods.] It has been already stated, that in order to constitute larceny, there must be such a taking of the goods, as would, without the felonious intent, amount to a trespass. Therefore, if the party obtain possession of the goods lawfully, as upon a trust, for or on account of the owner, by which he acquires a kind of special property in them, he cannot afterwards be guilty of felony, in converting them to his own use, unless by some new and distinct act of taking, as by severing part of the goods from the rest with intent to convert them to his own use, he thereby determine the privity of the bailment and the special property conferred upon him, in which case he is as much guilty of a trespass against the virtual possession of the owner, by such second taking, as if the act had been done by a mere stranger.

3034. Instead of the expression "person going forth with any offensive weapon," the term "armed persons" is used in Reg. III. 1825; and it was declared by Const. No. 399 that clubs and sharpened bamboos should be considered as arms within the meaning of the regulation: that regulation was subsequently repealed by Reg. XVI. 1825, which notes

Meaning of the term offensive weapon.

Proof of the taking—with reference to the possession—original taking not felonious.] In cases, therefore, where the original taking of the goods is not *animo furandi*, a subsequent conversion of them to the party's own use will not constitute larceny. Upon an indictment for stealing, it appeared that the prosecutor's shop (containing the articles mentioned in the indictment) being on fire, his neighbours assisted him in removing his goods for their security; the prisoner probably had removed all the articles which she was charged with stealing, when the prosecutor's other neighbours were thus employed; she removed some of the articles in the presence of the prosecutor, and under his observation, though not by his desire; upon the prosecutor applying to her next morning, she denied that she had any of the things belonging to him, but they were found concealed in her house; the jury found her guilty, but said, that in their opinion when she first took the goods from the shop, she had no evil intention, but that such evil intention came upon her afterwards; and upon reference to the judges, they all held the conviction wrong, for if the original taking were not with intent to steal, the subsequent conversion was no felony, but a breach of trust.—So where a letter containing a bill of exchange was by mistake delivered to another person of the same name as the person to whom it was addressed, and the person to whom it was so delivered converted the bill of exchange to his own use, being convicted of larceny for this act, a case was reserved for the opinion of the judges, who held the conviction wrong, on the ground that it did not appear that the prisoner had any *animus furandi*, when he first received the letter; and a pardon was recommended.

Proof of the taking—with reference to the possession—original taking not felonious—bailees.] The cases which most usually occur, illustrative of this doctrine, are those where goods have been delivered into the hands of a bailee for a special purpose, who thereby acquires a right to the possession, and who, if he converts them, while in his possession as bailee, to his own use, even *animo furandi*, as he is not guilty of a trespass, is not guilty of larceny by that act. Thus if goods are delivered to a carrier to be conveyed, and he steals them on the journey, it is no felony.—So where a man delivered his watch to the prisoner to be repaired, who instead of repairing it sold it, this was ruled by Vaughan B. to be no felony. So, where the prosecutor had delivered a horse to the prisoner to be agisted at 1*s.* 6*d.* per week, and the latter after keeping the animal for one week, for which he received payment, sold it in the course of the second week; the prisoner having been convicted of larceny, the judges held the conviction wrong.—Upon the principle that it is not felony in a bailee to convert to his own use the goods bailed to him, a nice distinction has been grafted, which seems, says Mr. East, to stand more upon positive law, which cannot now be questioned, than upon sound reasoning. The distinction is thus stated by Lord Hale: if a man delivers goods to a carrier to carry to Dover, and he carries them away, it is no felony; but if the carrier have a bale or trunk with goods in it delivered to him, and he breaks the bale or trunk, and carries away the goods *animo furandi*, or if he carries the whole pack to the place appointed, and then carries it away *animo furandi*, it is a felonious taking; but that must be intended where he carries them to the place, and delivers or lays them down, for then his possession by the first delivery is determined, and the taking afterwards is a new taking. This distinction has been recognized and acted upon in numerous cases, not only of carriers and other bailees, where the bailment has been determined by breaking bulk &c., but likewise in the case of other persons, having a special property, where the contract conferring the special property has been terminated by the tortious act of the party. A farmer sent forty bags of wheat to the prisoner, who was a warehouseman, for safe custody; the prisoner took eight of the bags, and shooting the wheat out on the floor, mixed it with four bags of inferior wheat, and sold the whole twelve for his own benefit; he replaced the wheat thus taken from the prosecutor with inferior wheat of his own; it did not appear that there was any severing of part of the wheat in any one bag, from the residue of the wheat in the *same* bag; the prisoner being convicted of larceny, the judges were unanimously of opinion that the conviction was right, that the taking of the whole of the wheat out of any one bag, was no less a larceny than if the prisoner had severed a part from the residue of the wheat in the same bag, and had taken only that part, leaving the remainder of the wheat in the same bag. In order, therefore, to establish a larceny of goods which have been bailed, some act determining the bailment must be proved.—Where A asked the prisoner, who was not her servant, but only a casual acquaintance, to put a letter in the post, telling her it contained money, and the prisoner broke the seal and abstracted the money before she put it in the post; the judges held that she was guilty of larceny.—Although a contrary opinion appears to have been formerly

more particularly "any species of fire-arms, or spears, swords, clubs, or other weapons;" but the clause from which this is quoted has also been repealed by Reg. I. 1831: and it may therefore be held that clubs and sharpened bamboos fall within the meaning of the term "offensive weapon" used in the above definition.

entertained yet it is now settled, that when the owner parts with the possession of goods for a special purpose, and the bailee, when that purpose is executed, neglects to return, and afterwards disposes of them, if such bailee had not a felonious intention when he originally took the goods, the subsequent withholding and disposing of them will not constitute a new felonious taking, nor make him guilty of felony.

Proof of the taking—with reference to the possession of the goods—cases of servants.] Where a person has the bare charge or custody of goods, the legal possession of such goods remains in the owner, and larceny may be committed by the person having such a bare possession or custody. He that has the care of another's goods, says Lord Hale, has not the possession of them, and therefore may, by his felonious embezzling of them, be guilty of felony; as the butler who has the charge of his master's plate, the shepherd who has the charge of his master's sheep; and so it is of an apprentice that feloniously embezzles his master's goods.—So where a carter goes away with his master's cart.—The prisoner was a drover, and had been employed by the prosecutor as such, off and on, for nearly five years; being employed by him to drive a number of sheep to a fair, he sold several of them, and applied the money to his own purposes; being indicted for larceny he was found guilty; but the jury also found that he did not intend to steal the sheep at the time he took them into his possession; on a case reserved, all the judges who met were of opinion, that as the owner parted with the custody only, and not with the possession, the prisoner's possession was the owner's, and that the conviction was right.—So, where the prosecutor delivered to his servant a sum of money to carry to a person, who was to give him a bill for it, and the servant appropriated it to his own use, the judges were of opinion that this was not a mere breach of trust, but a felony. And where the servant of the prosecutor went to her master's wife, and told her she was acquainted with a person who could give her ten guineas' worth of silver, and the prosecutor's wife gave her ten guineas for that purpose, which she ran away with, she was found guilty of the larceny.—In order to render the offence larceny, where the property is taken by a servant, it must appear that the goods were at the time in the possession of the master. It is not, however, necessary that they should be in his *actual* possession, it is sufficient if he has a constructive possession, or possession in law. Therefore, where a man purchases goods, and sends his servant to receive them, and the servant carries them away, it is larceny, for the property carries with it the possession in law. On the other hand, unless the possession of the goods, actual or constructive, be in the prosecutor, no larceny can be committed upon them with regard to him. This distinction is very material, as drawing the line between larceny and embezzlement.—If the goods are not in the actual or constructive possession of the master at the time they are taken, the offence of the servant in taking them will be embezzlement, and not larceny. Therefore, where goods in the possession of a third person, and not yet delivered over to the master, are delivered to the servant, who appropriates them to his own use, this is not a larceny, for the time of the larceny must be referred to the period of the receipt of the goods by the servant, at which time there was no possession in the master, without which there could be no trespass, and no larceny. If, says Mr. East, the master had no otherwise the possession of the goods than by the bare receipt of his servant, upon the delivery of another for the master's use, and the servant have done no act to determine his original, lawful, and exclusive possession, as by depositing the goods in his master's house, or the like; although to many purposes, and as against third persons, this is in law a receipt of the goods by the master, yet it has been ruled otherwise in respect of the servant himself, upon a charge of larceny at common law, in converting the goods to his own use; because as to him, there was no tortious taking in the first instance, and consequently no trespass, as there is where a servant converts to his own use property in the virtual possession of his master.

Proof of the taking—distinction between larceny and obtaining goods, &c. by false pretences.] As the character of the transaction depends upon the intention of the parties, that intention must determine the nature of the offence. It is not however sufficient to show simply a felonious intent, an *animus furandi* on the part of the offender; the mere intent to commit felony, or rather fraudulently to appropriate the matter in question to the party's own use, is not sufficient to render the taking felonious, where the owner, although induced by the false representations of the offender, intends to part with his property in the matter delivered. The law of Scotland is the same as our own on this point; and the principle of the distinction, between larceny and false pretences is well expressed in the following passage from a writer on the criminal law of that country; "Where possession is obtained by

3035. In a case of highway robbery by two persons unarmed (the presence of a third person, though stated in the confession of one of the prisoners, not being proved by the evidence on record) it was held that more than two persons are required to constitute a gang, so as to bring the case within the above definition. N. A. R. vol. 2, page 172.

More than two persons are required to constitute a gang;

such false representations as induce the owner to sell or part with *the property*, the crime is swindling. But a variety of cases frequently occur, in which the possession is obtained, not on any contract or agreement adequate to pass the property, but on some inferior title, adequate to give the prisoner the right of *interim* custody. The distinction between such cases, and those in which the property is obtained on a false pretence, lies here,—that in the one case, the proprietor has agreed to transfer the property, and therefore he has only been imposed upon in the transaction; in the other, he has never agreed to part with his property, and therefore the subsequent appropriation is theft."—There is a numerous class of cases in which goods have been obtained from the owner with a fraudulent intent, but where the owner only intended to part with the possession, and not with the property in them. In these cases it has been held, that if the prisoner had the *animus furandi* at the time of the taking, and has converted the goods to his own use, the offence amounts to larceny. It has been generally in cases of this kind, that the distinction between larceny and obtaining goods under false pretences has been lost sight of. The false pretences are only the mode employed by the offender to procure the possession of the property, and render the case no less a larceny than if he had taken the property without the knowledge of the owner, or by force. The real distinction is, whether the owner intended to pass the right of property; if he did not, it is the subject of an indictment for larceny—if he did, of an indictment for obtaining money by false pretences.—But if there be only a negotiation for a purchase, and such purchase be not complete, the taking will amount to larceny, if there be a felonious intent on the part of the prisoner; as in the following case, which well illustrates the distinction between the offence of larceny, and of obtaining goods under the false pretence of purchasing them. The prisoner was indicted for stealing two silver cream ewers from the prosecutor, a silversmith; he was formerly servant to a gentleman, who dealt with the prosecutor, and some time after he had left him, he called at the prosecutor's shop, and said that his master (meaning the gentleman whose service he had left) wanted some silver cream ewers, and desired the prosecutor to give him one, and to put it down to his master's account; the prosecutor gave him two ewers, in order that his master might select the one he liked best; the prisoner took both, sold them, and absconded; at the trial the prosecutor swore that he did not charge the master (his customer) with the cream ewers, nor did he intend to charge him with either, until he had first ascertained which of them he had selected; it was objected for the prisoner, that this amounted merely to obtaining goods under false pretences; but Bayley J. held, that as the prosecutor intended to part with the possession only, and not with the right of property, the offence was larceny, but that if he had sent only *one* cream ewer, and had charged the customer with it, the offence would have been otherwise.

Proof of the things stolen.] The goods taken must appear in evidence to be *personal goods*; for none other can be the subject of larceny at common law. At common law larceny could not be committed of things that savoured of or adhered to the freehold, as trees, grass, bushes, bridges, stones, the lead of a house, or the like: the stealing such things was only trespass: but if these things be severed from the freehold, as wood cut, stones dug out of a quarry, &c., then felony might be committed by stealing them, for then they are personal goods: and so strict was the rule in this respect, that a larceny could not be committed even of title-deeds, or any other charter or writing concerning the realty, or even of the box in which they were kept. This state of the law has been remedied by various statutes, which make it felony to steal the ore of certain metals or stones from mines; to steal, or destroy or damage with intent to steal, any trees, saplings, shrubs, or underwood; to steal, or destroy with intent to steal, any fence, railing, or gate; or any cultivated root or plant; and to steal, or rip, cut, or break with intent to steal, any glass or wood work, or any thing made of metal, or any utensil or fixture, fixed to any building, or anything made of metal fixed in any land, being private property, or for a fence to any dwelling house, &c., or in any place dedicated to public use or ornament:—and so it is now a misdemeanor to steal any record, &c., or any original document belonging to a court of record, or relating to any cause or matter, civil or criminal, begun, depending, or terminated, in any court of record or equity; or to steal, or fraudulently destroy, or conceal, any testamentary instrument relating to any real or personal estate; or to steal any paper or parchment being evidence of the title to any real estate. Bonds, bills, &c., being mere *choses in action*, are not the subject of larceny at common law, for they are of no intrinsic value; but now by different statutes it has been constituted felony, to steal any valuable security, as for money or the payment of money, or entitling or evidencing the title of any

and in such case it is not necessary that they should be armed;

3036. Under the above definition a number of persons going out and committing robbery, is sufficient to constitute the offence of gang robbery or dacoity, although they were neither armed, nor guilty of any act of aggravation. Const. No. 750.

but if unarmed, there must be more than one.

3037. But in no case can a robbery committed by a single unarmed individual fall within the definition of robbery by open violence. N. A. R. vol. 2, pages 23 and 53.

Snatching from the person does not constitute the offence.

3038. Snatching or forcibly taking property from the person without any previous intimidation, personal injury, or violence, when the robber is unarmed, does not constitute the offence of highway robbery, or robbery by open violence. Const. No. 228. N. A. R. vol. 1, page 269; and vol. 2, page 153.

Example of case in which theft became robbery by open violence.

3039. Three persons broke open a granary, and were engaged in carrying out grain and other property, when they were discovered by certain police officers going their rounds: the robbers immediately took to flight, leaving their booty behind; but being closely pursued and overtaken, turned about, and attacked their pursuers. This was held to be dacoity. N. A. R. vol. 1, page 238.

person or body corporate to any share or interest in any public stock, or in any fund, or savings-bank, &c: and it is felony if any person employed under the post-office steals, or for any purpose whatever embezzles, secretes, or destroys a post letter; so, to steal any chattel, money, or valuable security out of a post letter, is felony: and if any person in the public service, entrusted by virtue of his office with the receipt, custody, management, or control of any valuable security, embezzles, or fraudulently misapplies the same, or any part thereof, it is felony. Larceny at common law cannot be committed of things which are not the subject of property, as of a dead corpse; but it is a high misdemeanor to disinter a dead body for the purpose of dissection, or to sell and dispose of it for gain and profit. So, of things in which no person has any determinate property, as treasure trove, waifs, &c., till seized, it has been said that larceny cannot be committed; but it would seem that the true owner, though unknown, has still a property in them, before seizure by the lord, unless there be circumstances to show an intended dereliction of the property: the same has been said of wreck; but now by statute it is felony, to plunder or steal any part of a ship or vessel in distress, wrecked, stranded, or cast on shore, or any goods, merchandise, or articles of any kind, belonging to such ship or vessel; but if articles of small value, stranded or cast on shore, be stolen without circumstances of cruelty, outrage, or violence, the offender may be punished for simple larceny. Again, no larceny at common law can be committed of such animals in which there is no property either absolute or qualified; as of beasts that are *feræ naturæ*, and unreclaimed; such as deer and hares, in a forest; fish in an open river or pond; or wild fowls, at their natural liberty. But if they are reclaimed or confined, and may serve for food, it is otherwise: so, all valuable domestic animals, as horses, and all animals *domitæ naturæ*, which serve for food, as swine, sheep, poultry, and the like, and the product of any of them, as eggs, milk from the cow while at pasture, wool pulled from the sheep's back feloniously; and the flesh of such as are *feræ naturæ* may be the subject of larceny; but as to other animals which do not serve for food, such as dogs, ferrets, though tame and saleable, and other creatures kept for whim and pleasure, stealing these does not amount to larceny, at common law. But the statutes have made it felony, or otherwise punishable to steal or kill, &c. deer which are private property; and special punishments have been enacted for taking or killing hares or conies in any warren, &c.; for stealing any beast or bird ordinarily kept in a state of confinement, not being the subject of larceny at common law; knowingly being in possession thereof, or of the skin or plumage thereof; for killing wounding or taking any dove-house pigeon, under such circumstances as do not amount to larceny at common law; and for stealing dogs. To take or destroy any fish in any water which shall run through or be in any land adjoining or belonging to the dwelling house of any person being the owner of such water, and having a right of fishery therein, is a misdemeanor; and to take and destroy fish in any other water, being private property, or in which there shall be any private right of fishery; and to take and destroy fish by angling in the day-time, in either description of water, is punishable upon summary conviction by fine, varying according to the nature of the offence.—*Roscoe and Archbold.*

and where violence was subsequent to the first entry.

3040. Where a gang of more than three armed men entered a house without using violence, but subsequently broke open the door of one of the inner houses and carried off a bell-metal pot, and afterwards severely beat the inmates in the attempt to rescue one of their number, they were convicted of dacoity; and it was held that wherever the violence is simultaneous with the entry in such cases, the crime falls within the above definition. N. A. R. vol. 3, page 271.

3041. Where a gang of twenty men armed with clubs secretly effected an entry into a house, and afterwards maltreated the inmates, it was held sufficient to constitute the crime of robbery by open violence as defined above. N. A. R. vol. 2, page 217.

Police.

Magistrates are to report immediately to the superintendent of police in English the occurrence of any aggravated case of dacoity; and afterwards to make a weekly report of their proceedings.

3042. Magistrates are not only to communicate freely with the superintendent of police, either privately or publicly, on the subject of gang-robbery; but they are also required, immediately on the receipt of intelligence that a dacoity has occurred attended with murder, torture, wounding, or other aggravating circumstances, to submit for his information and orders a report in the English language containing a brief abstract of the circumstances of the case, and of their own proceedings: and in all such cases they are to continue to send weekly reports of their progress in arresting the offenders and eliciting information, until the culprits are apprehended, or all immediate hopes of bringing them to justice have passed away. The superintendent of police must be kept fully acquainted with the occurrence of all heinous crimes and offences, particularly dacoities, highway robberies, and affrays, in order to make his office of any utility or assistance towards the suppression of crime; and any want of co-operation with him on the part of a magistrate will be brought to the notice of government.(a) C. O. Sup. Pol. *L. P.* No. 2 of 1839.

Formation of a register of sirdar dacoits and systematic receivers of plundered property.

3043. The Court of Directors observe that—"with regard to the sirdar dacoits and the receivers of plundered property who systematically follow dacoity as a profession, measures might be taken under the direction of the superintendent of police for keeping a register of the chief persons of either description, as has been done with such success in the thuggee department. Such a register might gradually be formed by preserving and connecting together the information procured with respect to each remarkable dacoity. Information for the same purpose might often be procurable from prisoners either before their trial or while undergoing their sentence. Care should be taken that persons about to be brought to trial for dacoity, or under sentence of imprisonment for that crime, should not have such means of communication with other parties, as may be used in the one case

(a) In C. O. No. 8 of 1839 the superintendent of police circulated the following extract from a letter addressed by order of the government of India to the Bengal government, dated May 13, 1839:—"On the character of the reports [the six-monthly reports of the magistrates] the president in Council observes that they appear to be wanting in circumstantiality with respect to the particular crime of dacoity. A variety of offences are often included under this generic name; and therefore it is desirable to have a more detailed account of such instances as occur, than is necessary in the case of other crimes. It is well observed by the Commissioner of Moorshedabad, that the fact of the perpetrators being inhabitants of the district in which the offence occurs, or persons coming from a distance, affects to a considerable extent the complexion of the case. The worst of all descriptions of dacoity is that, which is perpetrated by gangs settled in a district and bidding defiance to the police: the next in the scale of enormity is, when such robberies are perpetrated by gangs coming from remote or foreign countries: the last and least aggravated form that this crime assumes is, when it is committed by parties casually united under the influence of some sudden temptation or the pressure of accidental calamity."

for the corruption or intimidation of witnesses, or in the other case for effecting their escape." The superintendent of police calls the attention of magistrates to the subject, and remarks, that the great danger to be guarded against is the propensity of the prisoners to implicate innocent persons, and to give such information as they think is required though unsupported by facts. C. O. Sup. Pol. L. P. No. 13 of 1846.

The evidence of approvers must be received with caution.

* *For rule regarding the qualified pardon offered to dacoit-approvers, see para.* 304.

3044. The criminal authorities are to be on their guard against the abuse and oppression, to which the systematic and exclusive employment of approvers * for the conviction of persons accused of dacoity is necessarily liable: the testimony of men, by their own acknowledgment stained with the same crimes which they lay to the charge of others, stands always in need of some corroborative evidence; and if it be received with favor or without distrust, may from vindictive or selfish motives, or even from mere wantonness, be turned equally against the innocent and the guilty. C. O. No. 195 of vol. 3.

Trial.

Punishment does not depend on the amount, value, or description of the property plundered; and is not barred by the peculiar distinctions of Mahomedan law.

3045. In such cases of robbery by open violence, the punishment of the offenders is not to depend upon the amount, value, or description of the property plundered. Nor are any of the circumstances noted in the preamble to this regulation,(*a*) as barring a sentence of hudd under the Mahomedan law in cases of highway robbery, nor any other provision in that law, to be hereafter allowed to operate against the punishment of persons convicted of highway robbery, or of any robbery by open violence, as defined in the preceding clause

(*a*) The following is that part of the preamble referred to:—"It is further requisite to define the crime and punishment of robbery by open violence, under the continued prevalence of this atrocious crime; which is frequently attended with murder, or with maiming or other personal injury; as well as with the crime of arson or wilful burning of houses, and other aggravating circumstances; and for the punishment of which the specific provisions of the Mahomedan law, under the distinctions admitted to except offenders from the stated penalties, as well as from a distinction in the received construction of that law between highway robbery at a distance from any inhabited place, and robberies not committed on or near the highways, or committed in or near any place inhabited, have been found altogether inadequate. In the case of murder committed by one or more robbers on the highway (*kati-oot-tureek*) at a distance from any inhabited place, the whole of the principals and accomplices are subject by the Mahomedan law (under its specific provision of hudd, or stated punishment by the right of God; being, in other words, exemplary punishment inflicted for the prevention of crimes, which is the end of public justice) to a sentence of death. The same punishment in this instance is inflicted on the whole band, in consideration of each of them being aiding and abetting to the others; and this principle, as allowed by some of the Mahomedan lawyers, is obviously applicable to all murders and other crimes committed by open violence, and by a number of persons assisting and supporting each other; whether on the highway, remote from, or near to, an inhabited place; or within a place inhabited, or in any other place whatever. But, according to the prevailing doctrines, this provision of the Mahomedan law, as well as the provisions it contains for the punishment of highway robbery without murder, by amputation of two limbs, cannot be applied to murders, or robberies committed in any other place than on or near the highway at a distance from any place inhabited; and even with respect to these it is held, that the specific punishment is barred by any one of the band of robbers being under age, or a lunatic, or a relation within the prohibited degrees of the person robbed or murdered; or by the person robbed or murdered not being a fixed resident under the permanent protection of the Mussulman government; or, with respect to robberies, by one of the robbers having a joint interest in the property plundered, or such property not being considered in legal custody with respect to any one of the robbers; or lastly, with regard to the separate punishment of each robber, if his share of the property taken shall not amount in value to ten dirms, being, according to the received calculation of the dirm, somewhat less than three sicca rupees. These distinctions are evidently repugnant to the principles of public and equal justice; and it is highly requisite that provision be made for the more certain and adequate punishment of the heinous crimes of murder and robbery; as well as of robbery, with or without any other acts of aggravated criminality, wheresoever the same may be committed."

of this section; or of murder, or other acts of criminality committed in the prosecution of such robbery; or of an intent to rob; provided, as in all other cases of criminal conviction and punishment, that the party convicted be adult, and of sound understanding, so as to render him a proper object of punishment. Reg. LIII. 1803, sect. 3, cl. 2.

3046. Any person accused of the offence of dacoity with or without murder, or of having belonged to a gang of dacoits, or of the offence of unlawfully and knowingly receiving or buying property stolen or plundered by dacoity, may be committed by any magistrate within the territories of the East India Company, and may be tried by any court which would have been competent to try him if his offence had been committed within the zillah where that court sits. Act XXIV. 1843, sect. 2.

Persons accused of dacoity, or of belonging to a gang, or receiving plundered property, may be committed by any magistrate, and tried by any court;

3047. The above provision does not empower the courts to try prisoners for specific acts of dacoity committed beyond the Company's territories, without having first obtained the authority of government. Const. No. 1213.

but not for specific dacoity beyond the British territory.

3048. No court is, on trial of the offences specified in this Act [*i. e.* in section 2, *supra*] to require any futwa from any law officer. Act XXIV. 1843, sect. 3.—This refers to all cases of dacoity. C. O. No. 171 of vol. 3.

Futwa not required in trials for dacoity;

3049. But on the trial of a prisoner charged with going forth for the purpose of committing dacoity, the futwa of a law officer, or in lieu of it the verdict of a jury, or assessors, cannot be dispensed with under sect. 3, Act XXIV. 1843, as the offence is not one of those described in sect. 2 of that Act. For, although parties proved guilty of assembling and going forth to commit dacoity must necessarily be considered as belonging to a gang of dacoits, yet such an act would be regarded as inferential evidence in support of a charge of having belonged to a gang of dacoits, rather than as constituting *per se* the latter offence; and, adhering to the rule of literal interpretation applicable to penal law, those cases only are considered amenable to the provisions of the Act in question, in which one or other of the charges are made out in terms corresponding with the terms used therein. N. A. R. vol. 6, page 52.

but in trials for going forth with a gang to commit robbery, the futwa of the law officer, or the verdict of a jury or assessors, cannot be dispensed with.

Penalties.

3050. All persons convicted of being the heads or leaders of a gang of robbers, by whom a murder has been committed, or of having been actively concerned in the perpetration of such murder, or of any murder committed in the prosecution of robbery, or an intent to rob; or of having been present aiding and abetting, when such murder was committed; or, though not present, of having procured and caused by hire, counsel, or command, the perpetration of such murder in pursuance of a preconcerted plan to commit the same, or to commit robbery, are to be adjudged to suffer death. Reg. LIII. 1803, sect. 4, cl. 1.

Principals and accessaries in robbery attended with murder to be sentenced to death.

3051. The circumstance of one of the robbers being killed in the prosecution of the dacoity, is not considered any ground for an aggravation of punishment: the blood of the robber, in such cases, is deemed by the Mahomedan law unprotected; and the shedding it in consequence not to incur any legal penalty. N. A. R. vol. 1, page 20, note.

This does not apply to the case of one of the robbers being killed.

3052. All persons convicted of being the heads or leaders of a gang of robbers, by whom any person has been wounded, maimed, burnt, or subjected to other personal injury, torture, or cruelty, not occasioning homicide; or by whom a dwelling house or houses

Principals and accessaries in robbery attended with personal injury not occasioning death, or with

arson, or other aggravating act, are to be sentenced to transportation for life.

have been set on fire, or any other criminal and aggravating act committed in the prosecution of a robbery, or intent to rob (as well as persons convicted of having been actively concerned in any of the acts aforesaid, done in prosecution of a robbery, or intent to rob); or of having been present aiding and abetting when any such acts were committed; or, though not present, of having procured and caused by hire, counsel, or command, the perpetration of any such acts in pursuance of a preconcerted plan to commit the same, or to commit robbery, are to be adjudged to suffer imprisonment and transportation for life. Moreover, any leaders of gangs, or other heinous offenders, convicted of a repetition of the crime described in this clause; or, without such repetition, of a degree of cruelty, violence, or other aggravating criminality, which, under the discretion allowed by the Mahomedan law in cases of seasut, may be punishable with death, and which appears to the nizamut adawlut to render such heinous offenders deserving of capital punishment; are liable to a sentence of death. Reg. LIII. 1803, sect. 4, cl. 2.

In the case of leaders of gangs, or heinous offenders repeating the crime, or in very aggravated cases, the nizamut adawlut may pass sentence of death.

Corporal punishment may be adjudged in addition to imprisonment: and therefore additional imprisonment in lieu thereof.

3053. In all cases of conviction of the crime of robbery by open violence, as defined in cl. 1, sect. 3, Reg. LIII. 1803, whether such conviction be founded upon the free and voluntary confession of the prisoner, or upon the testimony of credible witnesses, or upon strong circumstantial evidence, and the party so convicted is not sentenced to suffer death, the sessions court before whom the prisoner is convicted, and the nizamut adawlut in trials referred to that court, are competent to adjudge corporal punishment in addition to the penalties of imprisonment and transportation for life, or of imprisonment and hard labor for the period of 14 years, whenever in consideration of the nature of the case, it appears proper to inflict such additional exemplary punishment.(a) Reg. III. 1805, sect. 2.

In cases attended with murder, or attempt to commit murder, or corporal injury endangering life, or other aggravation, if the prisoner is not liable to a sentence of death, the judge is to pass sentence of transportation for life, and to refer the trial to the nizamut adawlut, who are to pass the final sentence.

3054. In all cases in which a person appears to the session judge to be duly convicted (whether by his free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence) of being concerned, as a principal or an accomplice, in the crime of robbery by open violence, as defined in sect. 3, Reg. LIII. 1803, or of an attempt to commit the same;—if the robbery has been accompanied with murder, or with an attempt to commit murder; or has been accompanied with wounding, or other corporal injury to any person or persons in such a degree as to endanger life; or has been attended with any other aggravating act of criminality;—if the prisoner is not under the regulations in force liable to a sentence of death, the session judge is to pass sentence of imprisonment and transportation for life. But all such trials are to be referred to the nizamut adawlut in the manner prescribed by the existing regulations; and such sentence is not to be deemed final, nor is any warrant to be issued for carrying the same into execution, until it is confirmed by the nizamut adawlut: and if the session judge is of opinion that there are grounds for a mitigation or remission of punishment, he is to state the same in his letter of reference. The nizamut adawlut is to confirm such sentence of imprisonment and transportion for life; unless, from any extenuating circumstances appearing on the trial, the stated punishment appears too severe, in which

(a) The abolition of corporal punishment by Reg. II. 1834 of course renders this provision nugatory in cases in which a sentence of imprisonment for life is passed; but where the sentence is of imprisonment for 14 years, the courts may adjudge additional imprisonment for 2 years in lieu of stripes. See para. 902.

case that court is authorized to grant such remission or mitigation of punishment as appears just and proper.*(a) Reg. VIII. 1808, sects. 3, and 4. Reg. XVII. 1817, sect. 8, cl. 3. Reg. XVI. 1825, sect. 2.

* *v. para.* 1013.

The nizamut adawlut in such cases, and the session judge if the case is not referrible, may mitigate the prescribed sentence.

3055. Provided with respect to all the crimes, and degrees of punishment, specified in this section; that if, from any extenuating circumstances, which appear on the trial before the sessions court, or nizamut adawlut, the stated punishment in any particular instance appears too severe; or if, on consideration of the number of prisoners convicted of the same crime, and of any discriminative circumstances with respect to one or more or them, the example appears sufficient for the ends of justice, without extending the full degree of the prescribed punishment to the whole of the prisoners convicted, it is competent to the nizamut adawlut, or to the session judge if the trial is not referrible under the regulations to the nizamut adawlut, to mitigate the sentence in such cases as is deemed just and expedient. Reg. LIII. 1803, sect. 4, cl. 5.

Punishment to be adjudged by the session judge in unaggravated cases.

3056. In cases of conviction before a sessions court of the crime of robbery by open violence, as defined in sect. 3, Reg. LIII. 1803, or of an attempt to commit the same, if the robbery has not been accompanied with murder, or with an attempt to commit murder,

(*a*) As this paragraph is composed of provisions taken from several successive regulations, which have modified those preceding them; and as the language has been somewhat inverted, it seems proper to subjoin those provisions separately as in the original: viz.

"All persons convicted of being concerned, as principals or accomplices, subsequently to the promulgation of this regulation, in the crime of robbery by open violence, as defined in sect. 3, Reg. LIII. 1803, and who may not under the regulations in force be liable to a sentence of death, shall be adjudged by the courts of circuit and by the court of nizamut adawlut to receive 39 lashes with a corah, and to be imprisoned and transported for life; unless from any extenuating circumstances appearing on the trial, the stated punishment shall appear too severe; in which case the court of nizamut adawlut is authorized to mitigate the sentence, as in other cases left to the discretion of that court by cl. 5, sect. 4, Reg. LIII. 1803; or to act in pursuance of cl. 6, of that section, if the prisoner appear a proper object of mercy and pardon." *Reg. VIII.* 1808, *sect.* 3. "The courts of circuit shall refer to the court of nizamut adawlut, in the manner prescribed by the existing regulations, the trials of all prisoners convicted of the crime of robbery by open violence, and liable to the punishment declared in the preceding section. The judge of circuit, before whom the trial may be held, shall, in all cases, pass sentence for the stated punishment, if the prisoner appear to him, and to the law officer of the court of circuit, to be duly convicted, whether by his free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence. But such sentence shall not be deemed final, nor shall any warrant be issued for carrying the same into execution, until it be confirmed by the court of nizamut adawlut. And if the judge of circuit be of opinion, that there are grounds for a mitigation or remission of punishment, he shall state the same in his letter to accompany the trial, as required by cl. 3, sect 6, Reg. LIII. 1803." *Reg. VIII.* 1808. *sect.* 4.—"Persons convicted of robbery by open violence, as defined in cl. 1, sect. 3, Reg. LIII. 1803, when accompanied with wounding or other corporal injury not occasioning homicide, and likewise when not so accompanied, under the provisions for such cases in Regs. LIII. 1803, III. 1805, and VIII. 1808, are liable, by sentence of the nizamut adawlut, to receive 39 lashes with a corah, and to be imprisoned and transported for life." "Nothing in the above clause shall be construed to empower the courts of circuit to pass and order execution of a final sentence of conviction and punishment without reference to the nizamut adawlut, in any case of robbery by open violence, as defined in cl. 1, sect. 3, Reg. LIII. 1803." *Reg. XVII.* 1817, *sect.* 8, *cls.* 3 *and* 6. "So much of sect. 8, Reg. XVII. 1817, and of the preceding regulations therein referred to, or of any other regulation in force, as requires that the courts of circuit shall in all cases of conviction of the crime of robbery by open violence, as defined in cl. 1, sect. 3, Reg. LIII. 1803, refer the trial of the prisoner or prisoners so convicted for the final sentence of the court of nizamut adawlut, is hereby modified, as stated in the following section" (for which see the text, para. 3056). *Reg. XVI.* 1825, *sect.* 2.

whether by wounding, burning, strangling, poisoning, drowning, throwing into a well, or by any other means, nor has been accompanied with wounding, burning, or other corporal injury to any person or persons in such a degree as to endanger life, nor has been attended with any other aggravating act of criminality, such as appears to the session judge, before whom the trial is held, to merit and call for a more severe punishment than stripes and imprisonment with hard labor for 14 years in banishment from the district where the prisoner has resided, the session judge is authorized and directed, without reference to the nizamut adawlut (as required by clause 6, sect. 8, Reg. XVII. 1817), to pass such sentence as he deems adequate to the offence on due consideration of all the circumstances of the case, not exceeding the stripes [now commutable to 2 years' additional imprisonment] and term of imprisonment, with hard labor in banishment, above specified.(a) Reg. XVI. 1825, sect. 3, cl. 1.

Going forth with a gang to commit robbery; sentence imprisonment for 7 years;

* *The rule in para.* 3055 *for mitigating the punishment applies to these cases.*

and two years in lieu of stripes;

3057. Persons convicted of going forth with a gang of robbers for the purpose of committing robbery, but apprehended before they have committed such, or have made any violent attempt for the purpose, so as to bring them within the above provisions, are to be adjudged to suffer imprisonment and hard labor* for such period, not exceeding 7 years, as the circumstances of the case appear to merit. Reg. LIII. 1803, sect. 4, cl. 4.

3058. Persons convicted of the crime provided for by the above provision, are further declared liable to corporal punishment [now commutable to 2 years' additional imprisonment] in addition to the whole of the imprisonment provided for thereby, whenever it appears expedient, for the sake of example, to the sessions court before whom they are convicted, or to the nizamut adawlut in any cases referred to that court. Reg. III. 1805, sect. 3.

and to give security for future good conduct.

Rule for release of dacoits required to give security.

* *v. paras.* 887 *and* 2647 *et seq.*

† *v. paras.* 2667 *et seq.*

3059. Persons convicted of going forth with a gang of robbers for the purpose of committing robbery, but apprehended before they have committed such robbery, or made any violent attempt for the purpose, and adjudged to suffer temporary imprisonment under the above provisions, are previously to their release from confinement to be required to give substantial security for their future good conduct. In such cases, as well as in all instances wherein persons required to give security under cl. 6, sect. 2, Reg. LIII. 1803,* or any other provision in the regulations, are notorious robbers (dacoits) whom it would be dangerous to set at liberty without substantial security for their future good conduct, the prisoner is not to be released until such security be given, to the satisfaction of the sessions court upon the report of the magistrate, unless from the prisoner's behaviour during his confinement, or other circumstances, there appear to be sufficient ground of assurance to warrant his discharge on a mochulka, under the provision made for that purpose by sect. 11, Reg. LIII. 1803.† Reg. VIII. 1808, sect. 9.

If a village watchman or guard, or a police officer, of what-

3060. If any pyke, chokeedar, pasban, dosad, nigaban, or other village watchman, or guard, of whatever denomination, entertained or employed by a landholder, or by any

(a) It was at the same time provided that in all cases in which the robbery was committed by a gang of three or more armed robbers, whether armed with any species of fire-arms, or with spears, swords, clubs, or other weapons, the court of circuit should not be competent to pass sentence on conviction for a less punishment than 14 years' imprisonment in banishment, without referring the trial to the nizamut adawlut. But this has been wholly rescinded by Reg. I. 1831.

other person, for the protection of villages, houses, persons, or property, and consequently required by the regulations to assist the police officers in preventing robbery and other crimes, and in apprehending offenders; or if any police officer of whatever description (whether a police darogah, or tuhseeldar, entrusted with the charge of the police, a city or town cutwal, or a jemadar, mohurrir, burkundaz, peadah, or other person employed under the magistrates, the police darogahs and tuhseeldars, or under any other officers of police, for the protection of the inhabitants of the country and their property from robbery; or for apprehending robbers and other criminals; or generally for the performance of any duty of police, connected with the prevention of public offences);—is convicted of the crime of robbery by open violence as defined in cl. 1, sect. 3, Reg. LIII. 1803; whether such conviction be founded upon the free and voluntary confession of the prisoner, or upon the testimony of credible witnesses, or upon strong circumstantial evidence; and the party so convicted is not liable to suffer death under cl. 1, sect. 4, Reg. LIII. 1803, as an accomplice in murder as well as robbery; he is to be held and expressly deemed to be within the provisions contained in cls. 2 and 3 of that section,(a) whereby the nizamut adawlut are authorised to pass sentence of death in cases of aggravated criminality which appear to deserve it, although the robbery has not been attended with actual homicide; or where the robbery has been without any personal injury or other act of aggravation, to extend the sentence of that court, from imprisonment and hard labor for fourteen years, to imprisonment and transportation for life, if on consideration of any circumstance appearing upon the trial to aggravate the guilt of any particular prisoner, the infliction of such more severe punishment appears just and necessary. Under this declaration any watchman, guard, or police officer, as described in the present section, who is convicted of having been present, aiding and abetting, at a robbery by open violence, or at an attempt to commit such robbery; or though not present of having procured and caused by hire, counsel, or command, the perpetration of such robbery, or attempt to rob; is liable to suffer death, on the sentence of the nizamut adawlut, according to the regulations, if in the prosecution of such robbery, or attempt to rob, any person has been murdered, wounded, maimed, burnt, or subjected to other personal injury, torture, or cruelty, or any dwelling house has been set on fire, or other criminal and aggravating act committed; or is liable to a sentence of imprisonment and transportation for life, by the nizamut adawlut, if the prosecution of such robbery or attempt to rob has not been attended with homicide, personal injury, or any of the other aggravating acts above specified. It is further declared that any clear and direct connivance on the part of a watchman, guard, or police officer, as described in this section, whereby a gang of robbers have been enabled to commit any of the crimes above stated, is, if duly established, to subject the offender to the same penalty, as he would have been liable to if actually present aiding and abetting; or, though not present, if he had procured and caused the perpetration of the offence by hire, counsel, or command. Reg. III. 1805, sect. 4.

ever description, is convicted of robbery with open violence, whether as principal or accomplice, the sentence which would have been passed on any other person may be enhanced in his case to death or transportation for life according to the circumstances of the case.

Connivance on the part of such officer, subjects him to the same penalty as an accomplice.

3061. But the above provision is modified by sect. 2, Reg. XVI. 1825; and the trial of a chokeedar convicted of dacoity is not necessarily referrible to the nizamut adawlut.

But such trial need not be referred, if the judge considers a less

(a) Cl. 3 was rescinded by sect. 2. Reg. VIII. 1808; and the provisions of para. 3054 have been enacted in its stead.

severe sentence sufficient.

The session judge should himself pass sentence, unless he considers the prisoner deserving of a more severe punishment than stripes and 14 years' imprisonment in banishment. N. A. R. vol. 5, page 68.

Punishment of such officer going forth with a gang to commit robbery.

3062. If any watchman, guard, or police officer as described in the preceding section, is convicted of going forth with a gang of robbers for the purpose of committing robbery, or of conniving at the going forth of a gang of robbers for such purpose, but he, or they, are apprehended before they have committed robbery, or made any violent attempt for the purpose; the watchman, guard, or police officer, so convicted, is liable to corporal punishment [now commutable to two years' additional imprisonment] and imprisonment with hard labor for such period, not exceeding 14 years, as the circumstances of the case, in the judgment of the session judge before whom he is convicted, appear to merit; or if the session judge in any particular case deems the prisoner deserving of more exemplary punishment, he is to refer the trial to the nizamut adawlut, who are authorized, if sufficient ground appear, to extend the sentence to imprisonment with transportation for life. Reg. III. 1805, sect. 5.

Pardon, or mitigation of sentence.

3063. The sessions courts are to report to the nizamut adawlut, and that court, if it appears necessary, are to report to government, the case of any prisoner or prisoners, who appear proper objects of mercy and pardon; or if the punishment to which they are sentenced has not been adjudged under any provision of the Mahomedan law, or the regulations, expressly requiring the same, the nizamut adawlut, as already authorized, may remit the punishment, and order the discharge of the prisoner, without reporting the case for the orders of government. [See also the power of mitigation and pardon vested in the nizamut adawlut, paras. 1013 *et seq.*] Reg. LIII. 1803, sect. 4, cl. 6.

Precedents.

Dacoity attended with murder: sentence of death or transportation for life.

3064. On conviction of dacoity attended with murder, the prisoners have generally been sentenced to death, whether those by whom the murder was actually committed, or those present aiding and abetting; *N. A. R. vol.* 1, *pages* 3, 8, 14, 18, 25, 28, 30, 36, 40, 42, 44, 45, 48, 51, 66, 130, 140, 146, 186, 198, *and* 245. Where eleven prisoners were charged with the commission of repeated gang robberies, five of them concerned in cases attended with murder were sentenced to death; four (one of whom was a woman) engaged in several cases, of which one was accompanied with torture and beating, were sentenced to transportation for life; and the others, convicted of robbery, were sentenced to stripes and imprisonment in banishment for 14 years; *N. A. R. vol.* 1, *page* 36. Where the leaders of the gang have been sentenced capitally, the accomplices have been sentenced to transportation or imprisonment for life, or to imprisonment in banishment for 14 years; *N. A. R. vol.* 1, *page* 154; *vol.* 4, *pages* 313 *and* 338; *and vol.* 5, *page* 11. Where the principals were sentenced to death, the accomplices who did not appear to have taken any part in the murder were sentenced to transportation for life; *N. A. R. vol.* 1, *pages* 12, *and* 29:—so, where a prisoner confessed to having been engaged in a dacoity attended with murder, but there was no reason to believe that he had been immediately concerned in the murder, he was sentenced to transportation for life; *N. A. R. vol.* 1, *page* 98. Where the five principals were sentenced to death, two others who confessed that they formed part of the gang, but alleged that they remained in the boats while the others

went to commit the robbery, and there was no other evidence against them, were sentenced to imprisonment in banishment for 14 years; *N. A. R. vol.* 1, *page* 10. In the case of a robbery by open violence committed by a hill-tribe of Le Mro, in Arracan, upon a village recently located near them, in which fourteen persons were murdered, nine others severely wounded, and five carried into captivity (of whom three were recovered, one died a natural death, and one was supposed to have been sold); and the prisoners offered no extenuating plea; the three chiefs and leaders were sentenced capitally, and the rest to imprisonment in banishment for 14 years; but they were all pardoned by government, at the court's recommendation, in consideration of their having been induced to give themselves up by a promise (though unauthorized) of impunity; *N. A. R. vol.* 5, *page* 31.—From the more recent cases reported, it seems to be the rule that those only of the prisoners who are proved to have been the leaders of the gang, or to have taken a more active part in the actual murder, should be sentenced to death: thus, where no one of the prisoners was proved to have been the leader, or to have been the actual murderer, or to have been more guilty than the others, all who were present aiding and abetting in the dacoity were sentenced alike to imprisonment for life in Allipore jail, or to transportation for life; and an accessary after the fact to imprisonment for 7 years; *N. A. R. vol.* 3, *pages* 76, *and* 295; *vol.* 5, *pages* 38, *and* 153. In a peculiar case, tried by the commissioner for the north-eastern parts of Rungpore with the aid of assessors, four prisoners were sentenced to imprisonment in banishment for life, and four, whom the assessors, from their previous knowledge of the characters of the parties, considered most likely to have been led away by the others, were sentenced to imprisonment in banishment for 14 years; *N. A. R. vol.* 3, *page* 246. In one case, the two prisoners clearly shown to have been the leaders were sentenced to stripes and imprisonment for life in Allipore jail; and of the others, thirty were sentenced to stripes and imprisonment in banishment for 14 years, four to stripes and imprisonment for 7 years, and three in consideration of their extreme youth (not having attained the age of 15) to stripes alone; *N. A. R. vol.* 4, *page* 179. Where the prisoner was apprehended after having eluded pursuit for 26 years, and convicted of having been an accomplice, he was sentenced to imprisonment for life in Allipore jail; *N. A. R. vol.* 4, *page* 12. In a case of river-dacoity, where a man was presumed to have been drowned in endeavouring to escape from the dacoits, the prisoners were sentenced to stripes and transportation for life; *N. A. R. vol.* 1, *page* 204. Where a prisoner, convicted of being an accomplice in a dacoity attended with murder, was sentenced to death; a second, convicted of being an accessary before the fact, was sentenced to 14 years' imprisonment; a third, convicted of privity after the fact and receiving and secreting part of the plundered property, to imprisonment for 14 years; and a fourth, convicted of privity after the fact, to imprisonment for 7 years; *N. A. R. vol.* 3, *page* 355.

Peculiar case.

The leaders only, or those who have taken the more active part in the murder, are usually sentenced to death;

and less severe sentences have been passed in some cases.

Case in which the prisoner eluded pursuit for 26 years.

Case attended with accidental death.

Accessaries before and after the fact.

3065. The prisoners, of the *shigolkhor* or *budhuck* cast, issuing from their haunts in the Oude territory, assumed the disguise of a raja and his retinue proceeding on a pilgrimage, entered the Company's territory, attacked a boat laden with treasure in the Behar district, and carried off the treasure, killing and wounding ten men. Having made good their retreat, they were proceeding the following year on a similar expedition, when they were apprehended. Mirhban Sing, the leader, was sentenced to death; 28, convicted

Cases of budhucks, or shigolkhors;

of being accomplices, to stripes and transportation for life; 4, of privity and connivance in the said robbery and of being professed dacoits to stripes and imprisonment in banishment for 14 years, and then to find security for good behaviour; 76, of going forth to commit robbery and of being professed dacoits, to imprisonment in banishment for 7 years and then to furnish security; and 15, of going forth to commit robbery, to be imprisoned in banishment for 7 years; *N. A. R. vol.* 2, *page* 125.[a] Sixteen prisoners, convicted on their own confessions of being *seeal-marooah* dacoits, and of having been concerned severally in one or more of eight separate cases of dacoity, three of which were attended with murder and wounding and four with wounding, were sentenced to transportation for life; capital punishment was remitted, because one of the judges, not being satisfied of the truth of their confessions to the specific dacoities charged, would have acquitted them; *N. A. R. vol.* 3, *page* 313.

and seeal-marooah dacoits.

Case of murder committed in prosecution of attempt to commit gang-robbery.

3066. A prisoner convicted solely on his own confession of having gone forth armed in a gang with the criminal intent of robbing, and of having been present when, in the prosecution of this intent, the watchman of an orchard which they were robbing was killed, was sentenced as he did not appear to have been actively concerned in the murder to imprisonment for life: it is added in a note to the report, that "the prisoner was not one of those professed robbers, against whom the severe penalties of Reg. LIII. 1803 were particularly directed." *N. A. R. vol.* 1, *page* 316.

Dacoity attended with wounding or other personal violence.

3067. On conviction of dacoity attended with wounding, burning, beating, or other personal violence, the most usual sentence has been for transportation for life; *N. A. R. vol.* 1, *page* 45; *vol.* 2, *pages* 142, 166, *and* 185: and stripes have sometimes been added; *N. A. R. vol.* 2, *page* 10, *and vol.* 3, *page* 208. Where one prisoner was convicted of being concerned in a robbery by open violence attended with wounding, and the others of knowingly receiving property obtained thereby, the former was sentenced to stripes and transportation for life, and the latter to stripes and imprisonment for 14 years; the wives of two of the prisoners though convicted of receiving the plundered property were discharge on mochulkas as they appeared to have acted under the control of their husbands; and another woman, also convicted of receiving, was released on the same terms in consideration of her old age and helplessness; *N. A. R. vol.* 1, *page* 353. Where the dacoits secretly entered the house, and afterwards on discovery had recourse to personal violence, they were sentenced in one case to stripes and 14 years' imprisonment in Allipore jail, and in another case to imprisonment for 14 years. *N. A. R. vol.* 2, *page* 217; *and vol.* 3, *page* 271.

Case of wives receiving property plundered by their husbands.

Personal violence after secret entry.

Unaggravated dacoity.

3068. In unaggravated cases, the prisoners have been sentenced — to stripes and transportation for life; *N. A. R. vol.* 2, *page* 40; — to stripes and imprisonment for life; *N. A. R. vol.* 1, *page* 304; — the leader to transportation for life, and the others to impri-

(a) In calling for a return of dacoities supposed to have been perpetrated by budhucks or other gangs from the Oude territories, the superintendent of police observed, that those cases may be generally supposed to have been perpetrated by professional robbers from Oude, in which "the attack has been made by a body of armed men early in the evening, cutting down all who opposed them, plundering only cash or jewels easily portable and dispersing immediately afterwards, leaving no trace by which to follow them, as after the perpetration of a dacoity under such circumstances the gang will move from 30 to 50 miles before morning." See his C. O. No. 9 of 1840.

sonment in banishment for 14 years; *N. A. R. vol.* 1, *page* 20; — to stripes and imprisonment for 14 years; *N. A. R. vol.* 1, *page* 238. A prisoner convicted of dacoity on the river unattended with any aggravating circumstances, was sentenced to stripes and transportation for life, in consideration of his being a chokeedar and his having previously stolen the boat in which he went to commit the dacoity; *N. A. R. vol.* 2, *page* 150. Where an accomplice was sentenced to imprisonment for 14 years, another prisoner convicted of privity was sentenced to 7 years' imprisonment; *N. A. R. vol.* 4, *page* 71.

Case of a chokeedar.

Privity.

3069. In the case of a dacoity attended with wounding which occurred within the British territory, one of the prisoners was convicted of privity and sentenced to imprisonment for 3 years: and certain articles of the plundered property were found in the house of another prisoner without the Company's territory; but this was held to amount only to the knowing receipt of the property; and as there was no proof that the receipt took place within the British territory, he was ordered to be released; *N. A. R. vol.* 2, *page* 80. So, where the only evidence against the prisoners was the finding of part of the plundered property in their houses in the Oude territory, it was held presumable that the receipt took place where the property was found, and not where the dacoity was perpetrated, and they were released; *N. A. R. vol.* 3, *page* 149.

When the plundered property has been found beyond the Company's territory, it has been presumed that the receipt took place there, and not where the dacoity was perpetrated.

3070. Where the direct evidence to the recognition of the prisoners at the time of the robbery was unsupported by circumstantial evidence, the prisoners were acquitted; *N. A. R. vol.* 1, *page* 178; *vol.* 2, *page* 165; *and vol.* 4, *page* 282. The evidence of an approver, and the admission of three convicted accomplices, was held insufficient legal proof for conviction; *N. A. R. vol.* 3, *page* 112. So, where the only evidence against the prisoners consisted of their confessions, which appeared open to suspicion of having been improperly obtained in the first instance, the prisoners were released; *N. A. R. vol.* 1, *page* 273; *vol.* 3, *page* 274; *and vol.* 4, *page* 269. So, where the confessions of the prisoners were not taken down in the presence of the magistrate, and the evidence was otherwise insufficient, the prisoners were acquitted notwithstanding a futwa of conviction; *N. A. R. vol.* 2, *page* 70. Where the only proof against the prisoners was the discovery of certain property in their houses, which however was not satisfactorily recognized, the prisoners were released. *N. A. R. vol.* 1, *page* 257.

Acquittals from insufficient evidence in cases of dacoity.

3071. In cases of highway robbery amounting to robbery by open violence:—where the robbery was attended with murder, the prisoner was sentenced to death [the report of this case shows that the prisoner went forth with the intent to rob, but does not mention whether he was armed; this however is presumable, as he killed two persons travelling with him, one of whom had a sword]; *N. A. R. vol.* 1, *page* 211:—where the robbery was attended with beating from which the death of one person ensued, the prisoners were sentenced to transportation for life; *N. A. R. vol.* 5, *page* 80:—where there was wounding with intent to murder, the sentence was imprisonment for 14 years; in this case the session judge passed sentence without reference, but the court held that the disposal of the case was beyond his competence; *N. A. R. vol.* 5, *page* 152.—Where the prisoners in a large gang committed several highway robberies in the most daring manner, and resisted and severely wounded the cutwal and burkundazes sent to apprehend them, the instigators were sentenced to stripes and transportation for life, and the others to stripes and impri-

Highway robbery amounting to robbery by open violence, attended with murder;

with attempt to murder;

with wounding;

sonment for 14 years; *N. A. R. vol.* 1, *page* 347.—Where the magistrate committed the prisoners on a charge of highway robbery and wounding, and the session judge, after hearing the evidence in attestation of the mofussil confessions, and after the prisoners had pleaded to the above charge, returned the calendar to the magistrate to insert the words "intent to murder" after the word wounding; the prisoners were convicted by the court of the lesser charge only and sentenced to imprisonment for 14 years; *N. A. R. vol.* 6, *page* 7:—in a case of highway robbery attended with wounding, the sentence was mitigated to imprisonment for 14 years in consequence of the youth of the prisoner, and as this was his first offence; *N. A. R. vol.* 2, *page* 1:—in another case of the same nature two prisoners were sentenced to transportation for life, two to imprisonment for 14 years, and two convicted of privity to the robbery to imprisonment for 7 years; *N. A. R. vol.* 2, *page* 121.

with beating;

Where the prisoners were convicted of highway robbery attended with beating; the sentence was mitigated in one case, as it appeared to be the first offence committed by the prisoners, and as the prosecutor sustained no very serious injury, to stripes and imprisonment for 14 years; *N. A. R. vol.* 2, *page* 97: in another case, where the prosecutor was very slightly hurt, and under all the circumstances, the sentence was mitigated to imprisonment for 8 years; *N. A. R. vol.* 3, *page* 64: and in another case, as the prisoners were not old offenders, and were in a state of intoxication when the offence was committed, a mitigated sentence was passed of stripes and imprisonment for 7 years; *N. A. R. vol.* 2, *page* 24.

Kozakee.

In a case of highway robbery on horseback (*kozakee*), where the prisoner "had long been notorious, as being one of that daring description of robbers denominated kozaks, whose depredations are usually committed in the face of day, and who, relying on their expertness in eluding the pursuit of justice, rarely take the precaution to disguise their persons, or to conceal their mode of life, and in consequence are more frequently recognized than any other class of public offenders," he was sentenced to transportation for life; *N. A. R. vol.* 2, *page* 17.

Acquittals in cases of highway robbery amounting to robbery by open violence.

3072. In a case of highway robbery and murder, the prisoners were acquitted from doubt of the evidence of witnesses who swore to having seen the perpetration of the murder by them; *N. A. R. vol.* 3, *page* 276: so, the evidence of a single witness to the recognition of the prisoners as having belonged to the gang of robbers, was held insufficient for the conviction of the prisoners; *N. A. R. vol.* 3, *page* 99. And a voluntary confession of highway robbery was set aside from doubts of its truth excited by the probable motives leading to it; *N. A. R. vol.* 3, *page* 242.

Chooaree.

3073. Where a prisoner was convicted of having joined and associated with a band of chooars, and of having at different times, at night, in company with gangs of chooars armed with offensive weapons, extorted by intimidation quantities of grain from several persons; the futwa declared that the offence was not specifically provided for by any stated penalty in the Mahomedan law, but that it was very similar to *kati-oot-tureek*, or highway robbery, and liable to discretionary punishment by tazeer; and the court, taking into consideration all the circumstances of the case, and the offence not having been especially provided for by any regulation, sentenced the prisoner, under the discretionary power vested in them by cl. 3, sect. 7, Reg. LIII. 1803, to stripes and transportation for life; *N. A. R. vol.* 1, *page* 336.

3074. A large body of men armed with spears, clubs, and swords, and having lighted torches with them, attacked the house of a person for the purpose of carrying off his wife; the woman however escaped, but in the progress of the outrage her husband received a wound from a spear of which he died the following day; and the house was then plundered; the prisoners, convicted of being accomplices in the attack and plunder, were sentenced, the one who gave the fatal blow to imprisonment for life, the leader and contriver of the plot to imprisonment for 14 years, and the rest for 7 years; *N. A. R. vol.* 4, *page* 49. Where the prisoners were convicted of being accessaries before the fact to the plunder of a boat laden with grain by a large body of villagers, they were sentenced to imprisonment for 5 years; *N. A. R. vol.* 1, *page* 391.

Plundering, attended with homicide;

unaggravated.

SECTION II.

OF THEFT, AND ROBBERY.

3075. A person being charged with stealing a brahminee bull, which had been dedicated to religion and allowed to wander about without restraint, it was held that the fact of there being no ownership in any individual did not affect the criminality of the act, which must depend altogether on the *animus* by which the accused was actuated. Const. No. 803.

Definitions.

The absence of ownership in the thing stolen does not affect the guilt of the thief.

3076. The clandestine removal by a servant from his employer's residence of property placed under his custody by his employer, with the intent of appropriating such property to himself, amounts to theft. But where the servant appropriates the property without removing it from the premises of his employer, the offence amounts to embezzlement only. N. A. R. vol. 5, page 165.

Appropriation by a servant of his master's property.

3077. Where the crew of a stranded vessel broke open a box belonging to a passenger (who had left the vessel), removed the property, and appropriated it to themselves, they were convicted of theft; and the conviction by the magistrate "of the fraudulent appropriation of the property of the prosecutor" was quashed. N. A. R. vol. 5, page 180.

Appropriation by crew of a stranded vessel of property of a passenger.

3078. In all cases of theft, whether in a house, ware-house, or other place, or from the person of another (not coming within the provisions of the regulations in force for the punishment of robbery by open violence, or the provisions of cl. 1, sect. 2 of this regulation, *i. e.* cases of burglary), if the theft, or the attempt to commit the same, has been accompanied with murder or with an attempt to commit murder; or with wounding, burning, severe corporal injury, or other aggravating act of personal violence; it is the duty of the magistrate to commit the whole of the prisoners, who appear from the evidence adduced to have been concerned, either as principals or accomplices, in the offence, to take their trial before the sessions court. Reg. XII. 1818, sect. 3, cl. 2.

Commitment.

Cases which *must* be committed; if attended with murder or severe personal injury;

3079. In cases of theft where the amount or value stolen exceeds the sum of three hundred rupees, the amount is to be deemed a circumstance taking the case out of the

or if the amount or value of property

stolen exceeds 300 rupees.

magistrate's jurisdiction as to passing sentence on the accused, and is to make it necessary for him to commit the accused for trial to the sessions court. Reg. IV. 1820, sect. 4.

Cases which *may* be committed.

3080. The magistrate is also to exercise his discretion in committing for trial before the sessions court any persons charged with theft, although not attended with the aggravating circumstances above-mentioned, who from their notoriously bad character, or from their having been before convicted of a heinous offence, or from any other peculiar circumstances of the case, appear to him deserving of a severer punishment than the magistrate is authorized to inflict under the following clauses of this section. Reg. XII. 1818, sect. 3, cl. 2.

Previous conviction of theft of 10 rupees not to be deemed previous conviction of a heinous crime.

3081. A previous conviction of petty theft, not exceeding 10 rupees, when unattended with any aggravating circumstance, is not to be deemed a previous conviction of a heinous crime, such as precludes the magistrate's judicial cognizance of a charge of burglary or theft, or of buying or receiving stolen property, and requires that the prisoner be committed for trial before the sessions court.(a) Reg. VI. 1824, sect. 5.

Magistrate may commit under *any* peculiar circumstances; but the express circumstances must be mentioned in his roobakaree of commitment.

3082. A magistrate is not bound to dispose of a case of theft, although within his competency; but may commit the offenders to take their trial before the sessions court under the above provisions should any peculiar circumstances in the case induce him to consider this course of proceeding preferable; but in such case it is incumbent on him to state, in his roobakaree of commitment, the express circumstance or circumstances of aggravation, which have led him to commit the case, instead of disposing of it himself. The session judge is to furnish the same information in his abstract statement of sentences passed without reference. Const. No. 391, para. 5. C. O. No. 239 of vol. 1.

Judge how to proceed if no special grounds are recorded, or if he considers the commitment improper.

3083. In such case, where no special grounds are assigned in the roobakaree of commitment, or are shown on the proceedings to justify the commitment, the session judge is not competent to return the proceedings without trial, and to instruct the magistrate to dispose of the case; but he should call upon the magistrate to supply the omission, and in the event of insufficient ground for commitment being shown, he should, nevertheless, proceed to decide the case, contenting himself with recording, in his final proceeding or otherwise, a caution to the magistrate against making unnecessary commitments in future; and not exceeding (if the prisoner be convicted) that measure of punishment which it would have been competent to the magistrate to award, had he himself disposed of the case.* Const. No. 391, para. 6.

* *But see para.* 697.

Examples of magistrate's power to commit or pass sentence.

3084. On a second conviction of simple theft of property not exceeding 300 rupees,—the amount or value of property stolen in the first case being above 10 rupees, but not exceeding 300 rupees,—a magistrate is competent to pass sentence of punishment, provided that the amount of the latter theft does not exceed the sum of 300 rupees. Const. No. 419.

3085. A magistrate is competent to sentence a prisoner convicted of cattle stealing, who has been previously convicted of the same offence. Const. No. 1273.

(a) There appears an ambiguity in the wording of this provision, inasmuch as agreeably to the provisions of Reg. XII. 1818, a previous conviction of a heinous crime of whatever nature does not preclude the magistrate's judicial cognizance of a charge of simple theft not exceeding 300 rupees. Const. No. 419, para. 3.

3086. In a case of theft by a servant of his master's property, the amount or value of which is above 50 but does not exceed 300 rupees, and which is unattended with personal violence or other circumstance of aggravation, such as to bring the case within cl. 2, sect. 3, Reg. XII. 1818 [*i. e.* cases which *must* be committed], the magistrate is competent to punish the offender on his own authority to the extent specified in cl. 4 of the section quoted. Const. No. 391, para. 4.

3087. With exception to the cases above-mentioned, the magistrates are to hear and determine, without reference to the sessions court, all other cases of theft, and after having duly considered the evidence which is adduced on the part of the prosecution and of the prisoner, are to pass sentence of acquittal or conviction. Reg. XII. 1818, sect. 3, cl. 3.

In all other cases the magistrate *may not* commit.

3088. The declaration of the prosecutor on oath as to the value of property taken must be considered sufficient to determine in the first instance the tribunal by which the case should be tried; provided of course there is no reason to impugn the truth of it, on which point the magistrate is competent to make such enquiries as he thinks proper and to proceed accordingly. Const. No. 1030.

Rule for determining the value of the property stolen.

3089. In cases of theft cognizable by the magistrate under the foregoing rules, if the amount or value of the property stolen exceeds 50 rupees; or if the persons committing the theft have been before convicted of theft, burglary, robbery, or other heinous offence; or if the prisoner has committed the offence while employed in the office of watchman,(a) guard, or police officer, as described in sect. 4, Reg. III. 1805 [see para. 3060]; or is a servant of the person from whom the property has been stolen; or a servant employed in the house in which the theft has been committed; as well as in all cases of cattle stealing; the magistrate is empowered, on proof of the guilt of the prisoner, to sentence him to imprisonment with hard labor for such period as appears proper, not exceeding 2 years, and to corporal punishment [commutable by cl. 2, sect. 2, Reg. II. 1834 to one year's additional imprisonment]. Reg. XII. 1818, sect. 3, cl. 4.

Magistrate's powers.

Penalty to be awarded by magistrate, if property stolen exceeds 50 rupees; in case of previous conviction; where the offender is a watchman or police officer; or a servant of the person robbed; or employed in the house robbed; and in cases of cattle stealing.

3090. The term "cattle," as used above, must be held to include not only bullocks and buffaloes, but also horses, cows, sheep, goats, and donkeys. Const. No. 994.

Meaning of term "cattle."

3091. The rule in sect. 5, Reg. VI. 1824,* which declares a petty theft not exceeding 10 rupees not to be an heinous offence, applies only to the question of commitment; and cannot be held to supersede that contained in the above provision, which authorizes a magistrate to pass sentence of two years' imprisonment and stripes on conviction of theft, where the offender has been before convicted of the same, whatever may be the amount taken in either(b) case. Const. No. 488.

Punishment after previous conviction of theft not exceeding 10 rupees.

* *v. para.* 3081.

3092. A magistrate was informed that he was competent to inflict the full punishment of two years' imprisonment on a woman convicted of theft, on the ground of her having been twice before convicted, and appearing to be an incorrigible thief. Const. No. 468.

Case of incorrigible thief.

(a) This applies to private watchmen, entertained by individuals, as well as to those in the public service; see para. 3139.

(b) This is not strictly correct; for if the amount stolen in the case under trial exceeds 300 rupees, the magistrate is not competent to pass sentence, under sect. 4, Reg. IV. 1820. See para. 3079.

It is no aggravation that the prisoner has been formerly employed as a watchman: the magistrate is to state whether he was so employed at the time of committing the offence.

3093. When a prisoner was not a watchman at the time of committing the offence, the circumstance of his having been one formerly, or his being so denominated, is not to be regarded as a circumstance of aggravation under the above provisions. The magistrates are to state distinctly, in the column of remarks of the statements which they furnish of prisoners punished by them under Reg. XII. 1818, whether a prisoner whose profession is that of gorait, dhanuk, or any other description of watchman, was, at the time of committing the offence of which he is convicted, actually employed in the capacity of guard or watchman, as described in sect. 4, Reg. III. 1805, or otherwise. C. O. No. 297 of vol. 1.

Unaggravated thefts punishable by imprisonment for 6 months;

3094. In other cases of theft, not included in the foregoing provisions, the magistrate is either to refer the case for decision to his assistant, under the powers vested in the assistant to the magistrate by the regulations in force, or is to proceed to investigate them himself, and to pass sentence on the prisoners under the powers vested in him by sect. 19, Reg. IX. 1807 [*i. e.* imprisonment not exceeding 6 months and corporal punishment]. Reg. XII. 1818, sect. 3, cl. 5.

and for one year in addition in lieu of corporal punishment:

3095. A sentence of one year's imprisonment in lieu of corporal punishment, passed by a magistrate on a conviction of theft not exceeding 50 rupees in addition to imprisonment for 6 months, is not illegal under the wording of cl. 2, sect. 2, Reg. II. 1834. Const. No. 1183.

in unaggravated cases the sentence cannot be more severe.

3096. A magistrate is not competent, in cases of theft, to pass sentence of imprisonment exceeding 6 months [and stripes], unless the theft has been attended by one or more of the six aggravating circumstances enumerated in cl. 4, sect. 3, Reg. XII. 1818. Const. No. 358.

If theft does not exceed 50 rupees, stripes may be awarded to an adult offender.

3097. It is competent to a magistrate, on conviction in cases of theft of property not exceeding in value the sum of fifty rupees, to sentence the prisoner convicted to corporal punishment not exceeding 30 stripes of a ratan.(a) Act III. 1844, sect. 1.

If the offender is of tender years, the punishment is to be by stripes not exceeding 10;

3098. It is competent to a magistrate, and he is hereby required, on conviction in cases of theft of property not exceeding in value the sum of fifty rupees, if the person convicted appears to him by inspection or other evidence to be of such tender years as to require punishment rather in the way of school discipline than of ordinary criminal justice, to sentence such person to corporal punishment with a light ratan not exceeding 10 stripes. Act III. 1844, sect. 2.

such tender years being limited to the age of 18.

3099. With a view to uniformity regarding the description of persons to whom the above provision is to be held applicable, the nizamut adawlut have determined, with the sanction of government, that 18 years be taken as the limit of age at which offenders are to be considered of the tender years referred to therein. C. O. No. 1, January 22, 1847.

Under these provisions, if the offender is adult, the magistrate may punish by

3100. By section 1 of these provisions, magistrates are declared *competent*, in certain cases, to inflict corporal punishment on adult offenders; and are at liberty, therefore, whenever they may deem such a course preferable, to sentence such offenders when

(a) This recurrence of the legislature to corporal punishment is declared to be merely temporary, "until adequate improvements in prison discipline can be effected."

convicted of theft of property not exceeding 50 rupees in value to the other penalties prescribed by pre-existing laws for that offence. Section 2, on the other hand, leaves no discretion whatever to the magistrate as regards juvenile offenders, imperatively enacting that he shall punish such, in cases of the nature under notice, rather in the way of school discipline than ordinary criminal justice, by sentencing them to undergo corporal punishment with a light ratan. C. O. No. 174 of vol. 3, para. 2.

imprisonment or stripes; if of tender years, he *must* award stripes.

3101. A question has arisen regarding the course to be pursued towards persons convicted a second time of theft of property not exceeding 50 rupees in value, whether corporal punishment should be repeated, or other regulations providing for such contingencies enforced. Referring to the above construction of Act III. 1844, which leaves the infliction of corporal punishment, or the imposition of other penalty on adult offenders, in cases falling under its provisions, discretionary with the magistrate on primary conviction, —the courts of nizamut adawlut have ruled, that, as regards those offenders, a similar discretionary power is vested in the magistrate relatively to secondary convictions; and further, in maintenance of the broad distinction between the cases of adult and juvenile offenders, they have determined that if a juvenile offender who has been once sentenced to corporal punishment be still, on the occasion of his re-apprehension and second conviction of theft of property not exceeding 50 rupees in value, of such tender years as to require, in the opinion of the magistrate, that he should be punished rather in the way of school discipline than ordinary criminal justice, it is incumbent on the magistrate to pass sentence of corporal punishment. C. O. No. 174 of vol. 3, para. 3.

The same rule applies to the case of a prisoner convicted of a second offence not exceeding 50 rupees, who has previously been punished by stripes.

3102. No female is to be subject to corporal punishment; and in cases of infliction of corporal punishment, no other punishment is to be superadded; and the punishment is to be inflicted on all occasions in the presence of the magistrate. Act III. 1844, sect. 3.

Conditions of sentence of corporal punishment.

3103. Under the provisions of Act III. 1844, magistrates, joint magistrates, and persons lawfully exercising the powers of a magistrate, are alone competent to award corporal punishment; and the corporal punishment must be inflicted in the presence of such officers only. C. O. No. 174 of vol. 3, paras. 1 and 4.

Stripes can be awarded only by officers exercising the powers of a magistrate.

3104. Whenever a prisoner is charged before a magistrate or joint magistrate with two or more distinct offences, for neither of which he has been previously brought to trial; but for each of which he would be subjected, on conviction, to the penalties prescribed by cl. 4, sect. 3, Reg. XII. 1818 [*i. e.* in cases of theft attended with one of the aggravating circumstances which do not take the case out of the magistrate's competence]; the magistrate is to refrain from passing any sentence, until he has completed his proceedings in both cases. Reg. VI. 1824, sect. 2, cl. 1.

Where the prisoner is charged with 2 or more distinct offences both aggravated. magistrate how to proceed;

3105. Should the prisoner be convicted of two or more of the offences charged, the magistrate is authorized to reduce the punishment so as not to exceed in the aggregate imprisonment for the term of two years and stripes [or one year's additional imprisonment], provided he is of opinion, on consideration of the several acts of criminality established against the prisoner and the circumstances of each case, that the punishment above specified is sufficient. Reg. VI. 1824, sect. 2, cl. 2.

and what amount of punishment he may award:

but he may commit if he thinks it necessary.

3106. If, however, the magistrate is of opinion, that the prisoner is deserving of a more severe punishment than that above specified, he is to refrain from passing any sentence, and is to commit the prisoner to take his trial before the sessions court for each offence. Reg. VI. 1824, sect. 2, cl. 3.

Where both the offences charged are petty thefts, magistrate how to proceed;

3107. The provisions of cl. 1, sect. 2, Reg. VI. 1824 are extended to cases in which a prisoner is charged before a magistrate or joint magistrate with two or more distinct thefts, not being of the nature of those described in cls. 2 and 4, sect. 3, Reg. XII. 1818 [i. e. cases of theft which the magistrate must or may commit to the sessions, or attended with one of the circumstances which do not take the case out of the magistrate's competence;—or in other words, cases of petty theft, in which the magistrate cannot award a higher sentence than imprisonment for six months and one year's additional imprisonment in lieu of stripes] for neither of which he has been previously brought to trial; and those officers are to observe the course of proceeding laid down in the first quoted provisions in the trial of such cases. Reg. VI. 1829, sect. 2, cl. 1.

and what amount of punishment he may award

3108. Should the accused be convicted of two or more of the offences charged, the magistrate or joint magistrate is authorized to pass a sentence upon the prisoner for any term of imprisonment not exceeding two years with labor, in addition to the corporal punishment [or additional imprisonment] which those officers are empowered to inflict under the regulations. Reg. VI. 1829, sect. 2, cl. 2.

but he may commit if he thinks the prisoner deserving of a more severe punishment.

3109. The magistrates and joint magistrates are empowered to commit, for trial before the sessions courts, any persons charged with two or more offences of the above description, whenever they are of opinion that there exist any circumstances of aggravation, such as to render the prisoner deserving of a more severe punishment than they are competent to inflict. Reg. VI. 1829, sect. 2, cl. 3.

Power of session judge.

3110. Persons committed by the magistrate under the above provisions, if convicted on trial before the sessions court, are liable to the penalties prescribed for the offences in question by cls. 2, 4, 5, and 7, sect 8, Reg. XVII. 1817. Reg. XII. 1818, sect. 3, cl. 2.

Cases of robbery, burglary, or theft, attended with murder.

3111. Persons convicted of murder in prosecution of robbery, burglary, or theft, as in all other cases of wilful murder, are liable to a sentence of death by the nizamut adawlut under the laws and regulations in force which are applicable to such cases. Reg. XVII. 1817, sect. 8, cl. 2.

Cases of burglary, theft, or robbery, attended with attempt to murder, or corporal injury endangering life.

3112. In all cases of burglary and theft, or of theft without burglary, whether in a house or from the person of another, as well as in all cases of robbery, not within the provisions of the regulations in force for the punishment of robbery by open violence; if the robbery, burglary, or theft, or an attempt to commit the same be accompanied with an attempt to commit wilful murder, whether by wounding, burning, strangling, poisoning, drowning, throwing into a well, or by any other means; or be accompanied with wounding, burning, or corporal injury to any person or persons, in such degree as to endanger life; the offender or offenders who are convicted to the satisfaction of the nizamut adawlut of having been concerned, as principals or accomplices, in a robbery, burglary, or theft, or in an attempt to commit the same, attended with such aggravated criminality, are liable to the same punishment as that prescribed for robbery by open

violence; viz. imprisonment and transportation for life.—The trial in all such cases is to be referred by the sessions court to the nizamut adawlut; and the session judge, before whom the trial is held, is to proceed as directed in sect. 4, Reg. VIII. 1808,* and other regulations in force, respecting prisoners who are liable to a sentence of imprisonment and transportation for life. If the session judge is of opinion that there are grounds for a mitigation of the prescribed punishment, he is to state the same for the consideration of the nizamut adawlut. Reg. XVII. 1817, sect. 8, cl. 4.

Such trials must be referred.

* *v. para.* 3052*n*.

3113. A futwa convicting on strong presumption *(zun-i-ghalib* or *shoobah-i-cuvvee)* is a futwa of conviction; and a session judge concurring in such conviction in a case of burglary or theft attended with murder, or wounding or corporal injury endangering life, must proceed, as prescribed above, to pass sentence of imprisonment and transportation for life, and refer the trial for the final orders of the nizamut adawlut, suspending the issue of his warrant for execution of his sentence until the final orders of that court be received. Const. No. 558, para. 2.

In such cases, if the futwa convicts, even on presumption, the judge must pass the prescribed sentence, and refer the trial.

3114. Where the prisoners, in a case of burglary and theft, took the prosecutor's child, aged about one year, from its bed and left it in the adjoining garden, it was held to be a case of burglary attended with corporal injury in such a degree as to endanger life, and as such necessarily referrible to the nizamut adawlut under the above provisions. N. A. R. vol. 4, page 284.

Example of such case.

3115. All cases of administering *poisonous* drugs to persons, with a view to robbing them while in a state of insensibility, come within the provisions of cl. 4, sect. 8, Reg. XVII. 1817; and the session judge must pass sentence of imprisonment in transportation for life, and refer the case, if the prisoners are convicted, for the final sentence of the nizamut adawlut, whether death ensues or otherwise. C. O. No. 291 of vol. 1. Const. No. 365. N. A. R. vol. 3, page 333.

All cases of administering *poisonous* drugs with intent to rob come within the above provisions;

3116. As thuggee officers are vested with magisterial powers with respect to the specific crimes of thuggee and poisoning, so persons committed on a charge of poisoning may be tried by the session judge specially appointed for the trial of thugs. Const. No. 1107.

and may be tried by the thuggee judge.

3117. Persons accused of robbery and murder, or of either of those crimes, under circumstances justifying a suspicion that the crimes have been perpetrated by persons engaged in a systematic combination for such purposes, are to be made over to the assistant to the general superintendent for the suppression of thuggee, who will commit the persons so transferred to be tried before the special session judge for the trial of thugs, and will make investigations as to the existence of combinations of the kind described with a view to the suppression of the offences to which they give rise. [This order was circulated in the Behar districts only, but appears applicable to all the provinces.][a] C. O No. 92 of vol. 3.

If persons accused of robbery and murder appear to have been engaged in a systematic combination for such purposes, they are to be made over to the thuggee officers.

(*a*) The following extract from a letter of the superintendent of police was annexed to the above order: "I have no doubt however but what a combination exists along the lines of road frequented by travellers, pilgrims, &c., for robbery by this atrocious method; and that the dawk bearers, petty muddees at the halting places, bhutearas, and common thieves, are concerned in it. I also think that it is carried on to a greater extent than is officially

Cases of administering *intoxicating* drugs with intent to rob do not come within the above provision.

3118. The above rule is applicable only to the crime of administering *poisonous* drugs to persons, with a view to robbing them when in a state of insensibility; and does not include the offence of administering drugs and substances of a merely *intoxicating* character, and not of a nature to endanger life, for the purpose recited; consequently those cases only are referrible to the nizamut adawlut, in which the prisoners are accused and convicted of having administered *poisonous* drugs. C. O. No. 64 of vol. 3. N. A. R. vol. 5, page 121.

Form of indictment for administering poisonous or intoxicating drugs with intent to rob.

3119. In such cases an indictment is defective, if the name only of the drug used be given, and its designation of poison be not specifically adduced. Such indictments therefore are to be worded simply "administering poison or poisonous drugs with intent," &c. or "administering intoxicating drugs with intent," &c. (according as either of the above rules applies to the case), the article given, whether dhutoora or other substance, being adduced in the evidence in support of the charge. C. O. No. 83 of vol. 3.

The following rule does not apply if the drugs are only intoxicating.

3120. The provisions of cl. 5, sect. 8, Reg. XVII. 1817 are not applicable to cases of "administering intoxicating drugs and theft." Const. No. 1324.

Cases of robbery, burglary, or theft, attended with corporal injury not endangering life.

3121. In cases of conviction before the sessions courts of any offences specified in the preceding clause, wherein the robbery, burglary, or theft, or an attempt to commit the same, has not been accompanied with an attempt to commit murder; nor with wounding, burning, or other corporal injury, in such degree as to endanger life; but has been attended with wounding, or other corporal injury, in a less degree, the session judge, provided he concurs in the conviction of the offender, is without reference to the nizamut adawlut to adjudge him to suffer such punishment, as appears adequate to the offence, not exceeding the sentence which the sessions courts are authorized to pass in cases of burglary by cl. 1, sect. 3, Reg. I. 1811; viz. stripes [now commutable to two years' additional imprisonment] and imprisonment for 14 years in banishment from the district where the prisoner has resided. Reg. XVII. 1817, sect. 8, cl. 5.

known, or generally suspected; and that many of the travellers, whose corpses, at the times of pilgrimage to Gyah or Hurree Chetra, are found by the roadside, or at halting places, have met with their deaths from such means. The roads are so inadequately protected without any patrol, that there is always an opportunity for such a crime almost without a chance of discovery." The same officer has also recorded the following remarks: "The crime of theft by administering stupifying drugs is becoming, I am sorry to observe, common in these provinces, and Major Sleeman reports the same in that part of the country over which he has the chief police charge. It is safer than common theft, as the meetawallah has time to get off; and it is only from accidental circumstances that any clue is found or the party apprehended. The drugs administered are all stupifying; if the dose taken is large they cause death; if small stupefaction, not in my opinion intoxication. The meetawallah mixes the drug by chance, and leaves his victim to recover or die as the chance may be; and I think a heavier punishment than six or seven years' imprisonment should always be given to this class of offenders; and I would never give less than imprisonment for life, as such men should (like the thugs) not be allowed again to be at large to the injury of the community. That death does not ensue in every case is not the fault of the meetawallahs administering the drug in food or water; it arises from the merest chances, whether the stomach of the receiver is full or empty, the victim robust or weak, or the quantity of mixed food swallowed before the effect of the drug appears; and it is, I think, a mistake to charge this class of miscreants with administering *intoxicating* drugs where the parties recover, when they are always *poisonous* drugs dependent for their fatal effect on the quantity which the victim may swallow, or other circumstances, not on any designed will of the administerer." *Police Report of Sup. Pol. L. P. for the first six months of* 1841, *para.* 123.

3122. Nothing in the above clause is to be construed to authorize an enhancement of the penalties declared by the regulations in force for burglary, or theft, when not accompanied with wounding, or other corporal injury, nor with an attempt to commit murder by strangling, or other means, as described in cl. 4 of this section. Reg. XVII. 1817, sect. 8, cl. 6.

Restriction of the above rule.

3123. No part of the preceding section [which contains the penalties prescribed for the offence of gang-robbery] is to be considered applicable to secret theft, or larceny without open violence *(sarika-i-sogra)*, whether accompanied with burglary *(nuccub-zunee)*, or simple theft from the person or house, unaccompanied with any aggravating circumstance. In such cases the Mahomedan law, with the modifications of it in existing regulations, and the rules contained in sect. 2 of this regulation*, when the prisoner is declared liable to discretionary punishment, is to govern the sentences of the sessions courts; as well as of the nizamut adawlut in any cases referred to that court. Reg. LIII. 1803, sect. 5, cl. 1.

Provisions regarding robbery by open violence, are not applicable to other cases of theft or robbery without violence. Rules for guidance of courts in such cases.

* *v. paras.* 882 *et seq.*

3124. It is hereby declared, in explanation of the above provision, that the reference therein made to the Mahomedan law in cases of theft was not intended, and is not to be considered, to preclude the sessions courts from adjudging stripes [now commutable to two years' additional imprisonment] in addition to imprisonment not exceeding seven years, when such punishment in aggravated cases of theft appears just and proper. Reg. XVII. 1817, sect. 8, cl. 7.

Explanation of the above provision.

3125. The explanation contained in the two clauses of sect. 5, Reg. LIII. 1803,(a) respecting the distinction to be observed in cases of secret theft, or larceny without open violence, and of criminal acts of violence done in prosecution of the original intention to commit theft, is to be applied in like manner to the several provisions contained in the present regulation [*i. e.* for the punishment of police officers or watchmen being accomplices in or conniving at robbery by open violence*]. But if any police officer or any guard, or watchman, bound to assist the officers of police,† as described in sect. 4 of this regulation, is convicted of theft, though without any act of violence, or of clear and direct connivance at the perpetration of such crime, he is liable to suffer such aggravation of punishment as the sessions court, before whom he is convicted, or the nizamut adawlut if the case is referrible to that court, deem adequate to his offence, not exceeding the limitations prescribed by cl. 7, sect. 2‡, and cl. 3, sect. 7¶, Reg. LIII. 1803, for cases not specifically provided for by the regulations, or by any stated penalty in the Mahomedan law. Reg. III. 1805, sect. 6.

Punishment of watchmen or police officers convicted of theft.

* *v. para.* 3060.

† *That is, private watchmen entertained by individuals, as well as those in the service of government; see para.* 3139.

‡ *v. para.* 888.

¶ *v. para.* 995.

3126. With a view to enable the nizamut adawlut to judge, from the abstract statements of prisoners punished without reference, of the fitness of the sentences passed in cases of burglary, theft attended with personal injury, and the knowing receipt of property

Judge to explain in the abstract statement, if the sentence awarded exceeds imprisonment for 4 years

(a) One of these clauses is given above; the other declared murder, wounding, or other personal injury, and any other criminal acts of violence, done in prosecution of an original intention to commit theft, liable to the same punishment, as is specified in the preceding section, for the same acts of criminality committed in prosecution of robbery by open violence. Clause 2 is repealed by Reg. XVII. 1817, and the provisions given above enacted in its stead.

with stripes. But this does not fix a maximum sentence for unaggravated cases.

acquired by theft or robbery; the session judges are required, whenever by reason of circumstances of aggravation a sentence of severity (exceeding 4 years' imprisonment with stripes) is passed, to insert under the column of remarks a brief explanation showing what those circumstances of aggravation are. But this order is not intended to fix a maximum of punishment in unaggravated cases, and is not to be construed as such: nor is it to supersede the necessity of furnishing brief explanations, showing the nature of each case, in the column appropriated for that purpose.* C. O. Nos. 216 and 275 of vol. 1.

* *v para.* 3082.

Precedents.

Theft attended with murder;

3127. Where the prisoner was convicted of being an accomplice in theft attended with murder, the deceased having held him by the hair until apprehended, he was sentenced to death, though it appeared that he was unarmed and that his accomplices had given the fatal wounds; *N. A. R. vol.* 1, *page* 312. Where two prisoners were convicted, on their own confessions and by circumstantial evidence, of being accomplices in a murder in prosecution of theft, they were sentenced to imprisonment for life; another prisoner, who had been improperly admitted by the commissioner to give evidence as an approver, was ordered to be re-committed, and afterwards sentenced to the same punishment; and a fourth prisoner was acquitted of the charge of murder, but ordered to be committed for knowingly receiving part of the stolen property, and was afterwards sentenced by the commissioner without reference to imprisonment for 10 years; *N. A. R. vol.* 4, *page* 32. Where the prisoners were convicted on violent presumption of the murder of travellers for the sake of their property, they were sentenced to imprisonment for life in Allipore jail; *N. A. R. vol.* 3, *page* 349: in a similar case a capital sentence was not passed, because one of the judges of the court considered the evidence to be insufficient to warrant their being convicted of the capital offence, and they were sentenced to imprisonment for life; *N. A. R. vol.* 4, *page* 183. A prisoner, aged 16 years, convicted of theft attended, though without his privity or intent, with murder, was sentenced, in consideration of his youth and all the circumstances of the case, to stripes and imprisonment for 7 years; *N. A. R. vol.* 2, *page* 331. Where the prisoner was convicted of stealing the ornaments from a child, attended with accidental wounding, he was sentenced to imprisonment for 7 years; *N. A. R. vol.* 4, *page* 193.

with accidental wounding.

Theft by a relation

by a servant.

3128. Where the prisoner, residing in the same house with his step-mother, broke open a locked chamber belonging to the latter, during her absence, and carried off certain property which on the trial he claimed as his own, he was convicted of theft, and sentenced to imprisonment for 2 years; *N. A. R. vol.* 5, *page* 93. A prisoner, convicted of stealing from his master money and effects to the value of 1500 rupees, was sentenced by the session judge to stripes, tusheer, and imprisonment for 5 years; under the provisions then in force, the sentence should have been imprisonment for 7 years, and the tusheer was unauthorized; as, however, the court presumed the corporal punishment and tusheer to have been already inflicted, they did not interfere with the sentence; *N. A. R. vol.* 1, *page* 223. A prisoner convicted of theft of property belonging to his employer, was sentenced to imprisonment for 5 years; and another convicted of knowingly receiving the stolen property, for 2 years; *N. A. R. vol.* 5, *page* 165. Where the crew of a stranded vessel broke open a box of a passenger and appropriated its contents, they were convicted

by the crew of stranded vessel.

of theft, and sentenced to imprisonment for 3 years; *N. A. R. vol.* 5, *page* 180. Where a prisoner was acquitted of theft, notwithstanding his foujdaree confession, as there was strong reason for believing that the charge of theft had been got up with a view to bring disgrace upon the party at whose instigation the theft was said to have been committed, the recovered property was left at the disposal of the magistrate; *N. A. R. vol.* 3, *page* 263.

acquittal, and disposal of property.

3129. In cases of highway robbery not amounting to robbery by open violence; where the prisoner was the last person seen in the company of a missing woman, and subsequently pawned her necklace and ear-rings as the property of his wife, and these facts combined with other circumstances warranted a violent presumption that he had robbed and made away with the missing woman, and left no reasonable doubt of his having destroyed her, he was sentenced to imprisonment for life; *N. A. R. vol.* 4, *page* 164. Where the robbery was accompanied with wounding and intent to kill, the prisoner was sentenced to stripes and transportation for life; *N. A. R. vol.* 2, *page* 77; and in a similar case to imprisonment for life in the Allipore jail; *N. A. R. vol.* 5, *page* 54: and where the prisoner was convicted of robbing his fellow mendicant, an old woman, in the jungle, after beating her with intent to kill, and leaving her there for dead, he was sentenced to imprisonment for 21 years in the Allipore jail; *N. A. R. vol.* 2, *page* 219. On conviction of attempt to murder with intent to commit robbery, the prisoner was sentenced to imprisonment for life; *N. A. R. vol.* 2, *page* 264:—where the prisoners were charged with administering a deleterious drug to some travellers in food, from eating which death ensued, and with robbing them while insensible from the effects of the poison; the nizamut adawlut were not satisfied with the evidence to the alleged murders, and convicting the prisoners of having been concerned in highway robbery only, sentenced them to stripes and transportation for life; *N. A. R. vol.* 1, *page* 320. Where a prisoner, alone and unarmed, was convicted of highway robbery accompanied with only slight personal violence, he was sentenced to imprisonment for seven years; *N. A. R. vol.* 2, *pages* 23, *and* 53; and, in another case, to stripes and imprisonment for five years; *N. A. R. vol.* 2, *page* 172. A prisoner convicted of suddenly snatching a necklace from a boy on the highway, without previous intimidation or act of violence, was sentenced to imprisonment for three years; *N. A. R. vol.* 1, *page* 269.

Highway robbery not amounting to robbery by open violence; attended with murder;

with intent to kill

with personal violence;

without aggravation.

3130. Five prisoners convicted on strong presumption of having perpetrated the wilful murder of a churrundar, in charge of property on board a boat to which they were attached as boatmen, and of having embezzled the said property, and sunk the boat, were sentenced to stripes and transportation for life; *N. A. R. vol.* 2, *page* 28. Where the prisoners were convicted of plundering a stranded boat, and the offence did not amount to robbery by open violence, they were sentenced to imprisonment for three years; *N. A. R. vol.* 2, *page* 315.

Plundering attended with murder;

unaggravated.

3131. In cases of administering poisonous or deleterious drugs in prosecution of theft, where death ensued and the prisoner buried the body in her own house, she was sentenced to death; *N. A. R. vol.* 1, *page* 137:—but where, although death ensued, it appeared that the intention of the prisoners was rather to produce a temporary state of insensibility than to cause death, they have been sentenced to imprisonment for life; *N. A. R. vol.* 1, *pages*

Administering poisonous or deleterious drugs in prosecution of theft; death ensuing;

death not ensuing;

149, 216, 229; *vol.* 3, *page* 227; *and vol.* 4, *page* 105. In cases in which death has not ensued,—where the prisoner was convicted in two cases of administering the seeds of dhutoora, and stealing the property while the owners were in a state of insensibility induced thereby, and she was an old offender, she was sentenced to imprisonment for life; *N. A. R. vol.* 1, *page* 368:—and in a similar case, where the prisoner was convicted in three separate instances, he was sentenced to stripes and imprisonment for life in Allipore jail; *N. A. R. vol.* 2, *page* 140. On conviction of a single offence, the sentence has been for stripes and imprisonment for 14 years; *N. A. R. vol.* 3, *page* 333; *and vol.* 4, *page* 217:—and where the robbery was not effected, the prisoner has been sentenced to imprisonment for eight years; *N. A. R. vol.* 2, *page* 359; and for seven years; *N. A. R. vol.* 3, *page* 21.

SECTION III.

OF BURGLARY.

Definitions.

What constitutes the offence of burglary.

3132. The magistrates are to be guided by the following rules, whenever individuals are apprehended and brought before them on a charge of having committed the offence of breaking into, or attempting to break into, a dwelling house, tent, boat, or other place of habitation, by night or by day, with an intent to steal (but without open violence, such as to constitute the crime of robbery by open violence); or with the offence of breaking into, or attempting to break into, any ware-house, store-house, or other building or place used for the custody or preservation of property, either by night or by day, with intent to steal (but without open violence); or of being present aiding and abetting in the commission of any of the offences above specified; or although not present of having procured or caused the perpetration of any of those offences by hire, counsel, or command, or of having in any manner confederated with the actual perpetrators of them in pursuance of a preconcerted plan. Reg. XII. 1818, sect. 2, cl. 1.

Mode of entry.

3133. The entering into a dwelling-house with intent to rob by lifting a door off its hinges, is burglary; as is also an entry by lifting the straw-thatch, after loosening the strings or fastenings: but entering a door left open, or climbing over an outer wall, unless followed by a burglarious entry into the house, does not amount to burglary. N. A. R. vol. 1, page 270.

Immaterial, whether the offence is by day or by night.

3134. In cases of burglary, it is immaterial whether the offence has been committed by day or by night; but the magistrate should take into consideration the time when the act was committed as one among the circumstances of the case, which are to guide his judgment in apportioning the degree of punishment suited to the offence. Const. No. 299.

Distinction between burglary and dacoity.

3135. In trials for burglary attended with violence, it should always be specified in the charge, whether the violence was simultaneous with or subsequent to the entry, as in the former case the crime is dacoity. N. A. R. vol. 3, page 271.

Commitment and penalties.

Cases which *must* be committed.

3136. If the perpetration of any of the offences enumerated in the preceding clause, not amounting to the crime of robbery by open violence, is accompanied with murder, or with an attempt to commit murder, or with wounding, burning, corporal injury, or other aggravating act of personal violence; or if the prisoners, or any of the prisoners concerned in the offences described in the preceding clause, appear to have been before convicted of burglary, robbery, or other heinous crime; or if the prisoners or any of them appear to be persons of notoriously bad character, or are charged with having committed the offence while employed in the office of watchmen, guards, or police officers, as described in sect. 4, Reg. III. 1805*; or if the value or amount of the property stolen exceeds the sum of 100 rupees; in all such cases it is the duty of the magistrate to commit the whole of the prisoners, who appear from the evidence adduced to have been concerned in the offence, to take their trial before the sessions court. Reg. XII. 1818, sect. 2, cl. 2.

* *v. para.* 3060.

Previous conviction of theft of 10 rupees is not a conviction of a heinous offence.

3137. A previous conviction of petty theft, not exceeding ten rupees, when unattended with any aggravating circumstance, is not to be deemed a previous conviction of a heinous crime, such as precludes the magistrate's judicial cognizance of a charge of burglary, and requires that the prisoner be committed for trial before the sessions court. Reg. VI. 1824, sect. 5.

If the burglary is perpetrated by a police officer, or watchman, even of another village, the case must be committed:

3138. Under the terms of the above provision, any person charged with having committed the offence of burglary, while employed in the office of watchman, guard, or police officer, against whom there appears sufficient evidence, must be committed to the sessions: and the fact of his being the chokeedar of a different village from that in which the burglary was committed, is immaterial as regards the commitment; though it would be considered in passing sentence, as it is unquestionably an additional aggravation that the property stolen was under the special protection of the thief. Const. No. 374.

and this applies to private watchmen entertained by individuals as well as to those in the public service.

3139. Under the terms of cl. 6, sect. 11, Reg. XIV. 1807 [*para.* 1501] and cl. 9, sect. 21, Reg. XX. 1817 [*para.* 1642], "private watchmen, entertained by individuals for guarding their houses, shops, or other premises" within the towns or villages, where the darogahs of police or officers of outposts are stationed, and within the cutwalee jurisdiction, are to be considered subject to the orders of the police officers, and are required to act in concert with them. And by cl. 4, sect. 12, Reg. XIV. 1807 the provisions of cl. 6, sect. 11 of the same regulation are declared applicable to all such private watchmen within the towns, gunjes, or other places forming part of any mofussil police jurisdiction. It follows therefore, that private watchmen, of whatever denomination and by whomsoever entertained, are "required by the regulations to assist the police officers in preventing robbery or other crimes and in apprehending offenders;" and that being thus in the same category with the chokeedars and others, described in sect. 4, Reg. III. 1805†, they come within the intent and meaning of the rule contained in cl. 2, sect. 2, Reg. XII. 1818, and must be committed to the sessions court if implicated in a burglary. C. O. No. 3, March 31, 1847.

† *v. para.* 3060.

Previous conviction of cattle stealing necessitates commitment.

3140. A magistrate is not competent to pass sentence on a prisoner convicted of burglary, who has been previously convicted of cattle stealing; but must commit the case to the sessions. Const. No. 1273.

Cases which *may* be committed.

3141. In modification of cl. 2, sect. 2, Reg. XII. 1818, the magistrates are hereby declared to be empowered to commit for trial to the sessions court any person charged with the offence of burglary, whenever they are of opinion, that there exist any circumstances of aggravation (though not of the nature specified in the clause above quoted) such as to render the prisoner deserving of a more severe punishment than the magistrates are competent to inflict. Reg. VI. 1824, sect. 3.

Magistrate *may* commit under *any* peculiar circumstances; but those circumstances must be stated: and the judge also is to note them in his abstract statement.

3142. A magistrate is not bound to dispose of a case of burglary, although within his competency; but may commit the offenders to take their trial before the sessions court, should *any* peculiar circumstances in the case induce him to consider this course of proceeding preferable: but in such case it is incumbent on him to state, in his roobakaree of commitment, the express circumstances of aggravation, which have led him to commit the case, instead of disposing of it himself. The session judge is to furnish the same information in the abstract statement of sentences passed without reference. Const. No. 391, para. 5. C. O. No. 239 of vol. 1.

Judge how to proceed if the magistrate makes an unnecessary commitment.

3143. In the event of a commitment being made by a magistrate, by error or negligence, in a case which, under the above provisions, he might have disposed of himself, the session judge should try and decide the case, not exceeding (if the prisoner be convicted) that measure of punishment which it would have been competent to the magistrate to award, had he himself disposed of the case; and reporting (where he sees sufficient ground) the magistrate's mode of proceeding to the nizamut adawlut for their orders, or contenting himself with recording in his final proceeding or otherwise a caution to the magistrate against making unnecessary commitments in future.* Const. Nos. 301, and 391 para. 6.

* *But see para.* 697.

Magistrate how to proceed if he considers it unnecessary to commit the case.

3144. If from the investigation held by the magistrate there appears reason to believe that a prisoner apprehended and brought before him has been guilty of any of the offences described in the first clause of this section, but that such offence has not been attended with any of the circumstances of aggravation specified in the second clause of this section, the magistrate is, in addition to the evidence which is adduced on the part of the prosecution, to take the defence of the prisoners and the evidence of the witnesses who are designated by the prisoners in support of their defence; and after a full and deliberate investigation is to proceed, without reference to the sessions court, to pass sentence of acquittal or conviction. Reg. XII. 1818, sect. 2, cl. 4.

Power of magistrate.

3145. If the prisoners are convicted, the magistrate is empowered to sentence them to imprisonment with hard labor for a period not exceeding 2 years, and to corporal punishment [now commutable to additional imprisonment for one year], and to carry such sentence into immediate execution. Reg. XII. 1818, sect. 2, cl. 5.

Persons found with a *seend-katee* to be required to give security.

3146. Any person upon whom the instrument denominated a *seend-katee*, used for the known purpose of *nuccubzunee*, is found, is to be detained by the magistrate in safe custody, and employed to work on the public roads until he gives security for his future good conduct, or until the session judge (before whom the magistrate is to lay his proceedings), on revision of those proceedings, directs the discharge of the prisoner on a mochulka. Reg. I. 1811, sect. 6.

3147. Whenever a prisoner is charged before a magistrate or joint magistrate with two or more distinct offences, for neither of which he has been previously brought to trial, but for each of which he would be subjected on conviction to the penalty prescribed by cl. 5, sect. 2, Reg. XII. 1818, the magistrate is to refrain from passing any sentence until he has completed his proceedings in both cases. Reg. VI. 1824, sect. 2, cl. 1.

Magistrate how to proceed if prisoner is charged with two distinct offences;

3148. Should the prisoner be convicted of two or more of the offences charged, the magistrate is authorized to reduce the punishment so as not to exceed in the aggregate stripes [now commutable to additional imprisonment for one year] and imprisonment for the term of two years, provided he is of opinion, on consideration of the several acts of criminality established against the prisoner and the circumstances of each case, that the punishment above specified is sufficient. Reg. VI. 1824, sect. 2, cl. 2.

and what amount of punishment he may award:

3149. If however the magistrate is of opinion, that the prisoner is deserving of a more severe punishment than that above specified, he is to refrain from passing any sentence, and is to commit the prisoner to take his trial before the sessions court for each offence. Reg. VI. 1824, sect. 2, cl. 3.

but he may commit if he thinks it necessary.

3150. In cases of conviction before the sessions court of individuals charged with any of the offences specified in cl. 2 of this section, the session judge is to be guided by the rules contained in sect. 8, Reg. XVII. 1817*; referring such cases, as come within the provisions of cl. 2 and cl. 4 of that section, to the nizamut adawlut; and in all other cases, not coming within the provisions of those clauses, sentencing the prisoners to suffer such degree of punishment, as on a consideration of all the circumstances of the case appears adequate to the offence, not exceeding however in any instance stripes [now commutable to 2 years' additional imprisonment] and imprisonment with hard labor for 14 years, with or without banishment from the district in which the prisoner has resided. Reg. XII. 1818, sect. 2, cl. 3.

Power of session judge.

* *See paras.* 3111 *et seq.*

The rules regarding the power of the session judge in cases of theft apply equally in cases of burglary.

3151. Under the discretion vested in the sessions courts by the above provisions, those courts may mitigate the punishment to below three years' imprisonment, and to such degree as they judge proper. Const. No. 299 para. 3.(a)

There is no minimum of sentence prescribed to the session judge.

3152. Should any person, in the commission, or in the attempt to commit any species of burglary as described above, kill another, the offender is to be adjudged to suffer death, as well as all persons found guilty of aiding and abetting therein. Reg. I. 1811, sect. 3, cl. 4; and sect. 4.

If the burglary is attended with murder, sentence of death may be passed.

Precedents.

3153. Where the prisoner has committed murder in the prosecution of burglary, he has been sentenced to death; and in one case, an accomplice in the burglary who was not actively concerned in the murder was sentenced to imprisonment for 14 years: *N. A. R. vol.* 1, *page* 7; *vol.* 4, *page* 277; *and vol.* 5, *page* 23.—Where three persons were concerned in a burglary attended with wounding which proved fatal, the one who stood by while the burglary was committed, and afterwards inflicted the fatal wounds, was sentenced to

Attended with murder;

with wounding which proved fatal;

(a) This construction also declares that the provisions contained in cls. 1, 2, and 3, sect. 3, Reg. I. 1811, and in cls. 2, 3, 4, and 5, sect 2, Reg. XI. 1814 (for the punishment of cases of burglary) are virtually superseded by the provisions of Reg. XII. 1818.

imprisonment for life in Allipore jail; the second, who actually committed the burglary, but ran off before the wounds were given, was sentenced to imprisonment for 14 years; and the third, who also stood by during the commission of the burglary and then ran off before the wounds were given, to imprisonment for 7 years; capital punishment was remitted "under all the circumstances of the case," but the motive for leniency may perhaps have been that the wounds were inflicted in return for blows and in a struggle between the deceased and the prisoner, and that they did not show an intent to kill; *N. A. R. vol.* 4, *page* 87. Where a prisoner in committing a burglary took the prosecutor's child out of his house, and after stripping it of its ornaments left it in a garden adjoining, and thereby endangered its life, he was sentenced to imprisonment for 10 years; another prisoner, convicted of knowingly receiving part of the stolen property, to 7 years' imprisonment; and a third convicted of privity to the theft to imprisonment for 3 years; *N. A. R. vol.* 4, *page* 284. Where the two prisoners were discovered in the act of undermining the wall of a dwelling house, and one of them wounded with a sword one of the persons who apprehended them, they were sentenced to stripes and imprisonment in banishment for 14 years; *N. A. R. vol.* 1, *page* 243. Before the enactment of Reg. XVII. 1817, and Reg. XII. 1818, unaggravated cases of burglary were punished with stripes and imprisonment for 14 years; *N. A. R. vol.* 1, *pages* 250, 255, *and* 262:—and where three prisoners broke into a cow-house at night and carried off the cattle therefrom, they were sentenced to stripes and imprisonment for 7 years; *N. A. R. vol.* 1, *page* 286:—no unaggravated case has been reported since the passing of those regulations. A chokeedar, convicted of burglary in a mohulla other than his own, was sentenced to stripes and imprisonment for 4 years; *N. A. R. vol.* 4, *page* 194. Where a prisoner was convicted of burglary and intent to steal unaccompanied with any aggravating circumstances, and sentenced by the judge of circuit in consideration of his notoriously bad character to stripes and imprisonment in banishment for 14 years, the nizamut adawlut reduced the term to 7 years, as it did not appear that the prisoner though of bad character had ever before been convicted of a specific offence; *N. A. R. vol.* 2, *page* 400. A prisoner convicted of being an accomplice in an attempt to commit burglary was sentenced, as a hardened offender, to stripes and imprisonment for 5 years; *N. A. R. vol.* 4, *page* 107.

with violence endangering life;

with wounding;

unaggravated.

Case of a chokeedar.

Prisoners notorious offenders.

SECTION IV.

OF THE MAHOMEDAN LAW OF SARIKA.(a)

Definition of the term.

3154. The legal meaning of sarika is defined to be, a sane and adult person wrongfully and furtively taking the undoubted property of another, such property being in due custody and of the value of not less than ten dirms (or rather more than three rupees). The furtive or clandestine taking, in cases of highway robbery, is explained to refer to the

Furtive taking.

(a) I am indebted for nearly the whole of this section on Mahomedan law to Mr. Harington's Analysis, vol. 1, pages 273, *et seq.*

imam, or chief magistrate, whose province it is to guard the highways by means of his assistants; in cases of private larceny, it respects the individual proprietor, or his representative. When the offence is committed at night, it is sufficient to constitute larceny, that it was commenced secretly,—as where the thieves, having effected a secret entrance into a house, carry off the property by open violence,—because at such a time it is difficult to obtain assistance; but in the day-time, when aid is readily procured, the secrecy must be continued throughout, and it is not larceny, if property obtained furtively is openly taken away. The custody requisite to constitute the crime is of two kinds,—of place,—and of person. Custody of place *(hirz ba mukan)* is when the property is in a house, or other receptacle generally used for preserving property; and there must be a taking away from such place. Custody of person *(hirz ba hafiz)* is when the property is within sight of the possessor, whether on a road or plain, and whether the keeper be asleep or awake: the crime is complete, if the property be seized by the robber, though it be not carried away; and the personal custody is perfect, whether the possession of the property by the holder be absolute and permanent, or delegated and temporary.

If by night, the offence must have commenced secretly; if by day, the secrecy must be continued throughout.

The requisite custody is of two kinds, —of place,—and of person.

3155. In cases of robbery, the Mahomedan law has two objects in view—one, the punishment of the offender, which is so severe that every facility is afforded to avoid its infliction; the other, the restoration of the property, to effect which various provisions of the law directly tend, and which does not take place if the prescribed punishment be inflicted.

The object which the Mahomedan law has in view.

3156. A charge of theft may be established by confession, or by the testimony of two male witnesses; but the kazee may advise the thief not to confess. If a confession be retracted, the infliction of specific punishment is stayed; but it does not prevent the restoration of the property. A confession of theft committed on an unknown person is insufficient for conviction. Where several persons confess to a joint theft, and half of them retract, the remainder cannot be convicted on their confession alone. And conviction cannot be had upon a confession of stealing property, part of which is declared by the person robbed to belong to the thief. The absence of accomplices indicated by the prisoner confessing is not sufficient to bar conviction. Where the evidence is insufficient for conviction, and the accused denies the charge, he may be required to exculpate himself on oath; and, if he refuses to do so, may be made answerable for the property stolen, but is liable to no further punishment. It seems doubtful whether the imam may chastise an accused person, whom he suspects of having the stolen property in his possession, in order to compel the restitution of it. The kazee is directed to be particular in his examination of the witnesses, as to time, place, and circumstances; as well as respecting the value of the property stolen, if it be not produced in court; and he is enjoined to ascertain their credit, if it appear doubtful. If the accused is a Mahomedan, the witnesses to prove the charge against him must be of the same persuasion; and if two infidels depose to a theft jointly committed by a Mahomedan and an infidel, their evidence is insufficient to convict either. If two witnesses accuse one person of theft, and two more depose to its commission by another person, neither can be convicted on their evidence, though the party robbed should charge one of them. A parole confession made before private individuals is insufficient, if the accused does not admit it. Nor is it sufficient, unless the confession expressly

Charge may be established by confession, or evidence.

If there is neither confession, nor evidence, the accused may be required to exculpate himself on oath; or may be beaten to extort confession.

Rules for taking evidence.

Religious persuasion of witnesses.

Contradiction in evidence.

Extrajudicial confession.

Particular terms required to make the proof sufficient.

declares that the property was stolen: and both the prosecutor and witnesses are permitted to use terms in their depositions, which may secure the right of property to the owner without subjecting the party accused to the punishment of theft; the reason of which is that a prisoner, who has suffered the prescribed punishment, cannot be called upon to restore the stolen property.—The legal penalty for a first offence is amputation* of the right hand; for a second offence, amputation of the left foot: if the crime is further repeated, the criminal may be imprisoned until he repent, or for life; or, in cases requiring exemplary punishment, he may be put to death.

Penalty.

* *For commutation of this penalty under regulation law, see para.* 857.

Circumstances in regard to the ownership of the goods, or the mode of taking, which prevent the infliction of the legal penalty.

3157. "A person stealing the property of his father, mother, or any of his ancestors; or the property of his son, or any of his descendants; is not liable to amputation; because such kindred are considered to have a mutual right of usufruct in the possessions of each other, as well as to hold a joint custody thereof for reciprocal benefit. For the latter reason also amputation is not incurred for stealing the property of any relation within the prohibited degrees, unless it be taken from a stranger's house, in which case there is a violation of custody; nor is it due for stealing the property of a stranger from the house of such a relation. A husband, or wife, stealing the property of each other, or a slave stealing the property of his master,(a) or mistress, or of his master's wife, or the husband of his mistress, is not liable to amputation; because the thief, in such instances, is at liberty to enter the house, or apartment, of the proprietor; and with respect to man and wife, although they may have distinct places of custody, they possess a mutual usufructuary right in the property of each other. In like manner a master stealing the property of his slave for whom a ransom is stipulated, or whom he has licensed to trade, is not subject to amputation; unless, in the latter instance, the slave have contracted a debt, in which case his property is considered to be in pledge for his creditor. Amputation is not incurred for stealing property out of a public bath, or from a house of general resort, in the day-time; when the custody of such places is questionable: but for thefts in the night-time, when strangers are not allowed ingress, the prescribed penalty is to be inflicted. If a guest steal the property of his host, he is not liable to amputation; as he has been allowed to enter the house; and his offence is considered to be rather treachery than theft: nor is a servant subject to the stated penalty for stealing the property of his employer, out of an apartment to which he is allowed access. In cases of burglary, if a thief break through the wall of a house, enter and take property, and be seized before he has carried it out of the house, amputation is not incurred; nor is it, if he give the property, at the entrance of the breach, to an accomplice standing without; because the thief who enters the house does not carry out the property, which, previously to his coming out of the house, falls into the possession of another; and the thief who receives and takes away the property has not committed any violation of custody: the whole of the conditions of theft therefore are not found in this instance.* But if the thief, who enters the house, throw the property out upon the highway, through the hole made by him, and then take it away, his hand is to be cut off, according to the opinion of Aboo Yoosuf; from whom it is further

So, in cases of burglary.

* *N. A. R. vol.* 1, *page* 250.

(a) But he is liable to discretionary punishment for breach of trust. N. A. R. vol. 1, page 233. And it seems that in all cases, in which the prisoner though guilty is not liable to amputation, discretionary punishment may be awarded.

recorded, that if the thief within the house put his hand entirely through the breach, and thus deliver the property to the accomplice without, the former is liable to amputation; as both are, if the thief without put his hand through the breach into the house, and thus take the property from the other within. The principle which governs the latter case applies also where a party of thieves enter a place of custody, and some take away the property, whilst the others stand by; for then the whole incur amputation, as in robbery by open violence, because the accomplices are ready to aid the perpetrators, and are therefore concerned with them in committing the offence. But according to the *Záhir oo' ruwáyát* the violation of custody must be completed by the entrance of the thief into the place of custody, whenever this may be practicable; and therefore if a person make a breach in the wall of a house, put his hand through, and take out property, without entering the house, he does not incur amputation. If a thief break a hole in a house, and go away, and the owner of the house, though he observe the hole, or though it be visible to passengers, omit to close it; and the thief return another night, and take property from the house; amputation is not incurred: nor is it for two or more successive thefts, each of less than ten dirms, if the owner, after being advised of the first theft, neglect to repair the breach: but if the owner be not advised, the value of the several thefts may be computed collectively. If a person keep his money tied in his sleeve in such a manner that the knot containing it is within the sleeve, and a cut-purse steal it by putting his hand under the sleeve, and tearing away the part which contains the money, he is liable to amputation; as he also is if the knot be tied on the outside, and on being opened the money fall within the sleeve, and is taken from thence by the thief: but if the knot be on the outside and torn away; or on the inside, and opened from without, the penalty is not incurred; the interior part of the sleeve, which is considered the place of custody, not being violated in the two latter instances. If a person steal one of a string of camels, or a load from one of them, he is not liable to amputation, from a doubt whether the camel be in legal custody; unless there be a guard (exclusive of the driver, or rider) for the express purpose of watching the camels, in which case the penalty is incurred: as it also is, if the thief break open a package, and take away its contents, whilst under personal custody. If some of a party of travellers steal the property of others, at their lodging place, though watched by the owners, the thieves are not liable to amputation; the lodging place being common. If a person enter a house by unlocking the door with a false key in the day-time, and take away the effects when no person is present, he is not subject to amputation: but if any of the family be in the house and not privy to the theft, the prescribed penalty is incurred. In like manner, if the door be open, and the thief enter by day, and steal, he is not liable to amputation: but if the door be shut, though not fastened, and he enter clandestinely and take away property, it is stated in the *Hávee* that he incurs the penalty of theft: as he also does if he enter the house at night, and take away property either by stealth or force, after the hour of evening prayer; unless his entering the house be known, at the time, to the owner. It is further stated in the *Hávee*, that if a herd of kids be collected in a fold, and one or more of them, to the value of ten dirms, be stolen from the enclosure, amputation is incurred, whether the owner be present or not. But for cattle stolen from pasture ground, the penalty of theft is not due, unless there be a watchman with them, for the express purpose of guarding them."

So, as regards the completeness or otherwise of the custody.

So, as regards other circumstances.

3158. "A breach of trust does not incur amputation; as the article entrusted is not in custody of the proprietor. Nor is it incurred by openly seizing or snatching away a thing, as such an act is not theft; and the prophet has said that "the hand of a plunderer, or snatcher of property, or of a trust-breaker, is not to be cut off." A *nubbásh*, or stealer from the dead, viz. of a winding-sheet, or other apparel of the dead, is also not liable to amputation, according to Aboo Huneefah, and Imam Mahomed; though Aboo Yoosuf and Shafeï maintain that he is. If a person steal property of which he is in part owner, he is not subject to amputation. And on the same principle, it is not incurred by any Mussulman stealing from the public treasury in a Mahomedan state: as every thing in it is considered to be common property of Mussulmans, and the thief has consequently a share in it. Lastly, if a creditor steal from the property of his debtor, to the amount of his debt only, amputation is not incurred; as this is deemed to be an enforcement of right, not theft." A *mooltakit* or finder, failing to make public advertisement of *lookta* or trove property, subjects himself to discretionary punishment; such property is considered as a trust in the hands of the finder.*

* *N. A. R. vol.* 1, *page* 308.

Descriptions of property for stealing which amputation is not incurred.

3159. "Amputation for theft is not incurred on account of things which, in their original nature, were of common use, and which in their actual state, are not esteemed a valuable property; such as wood, canes, grass, fish, fowls, game, brimstone, limestone, red-earth, mud, clay, dung, and similar articles; Ayeshah, the wife of Mahomed, having declared that in the prophet's time the stated penalty was not inflicted for such petty thefts; and the exemplary punishment of them is not judged requisite; besides which the custody of some of the articles specified is esteemed defective. Nor is amputation incurred for the theft of things which quickly spoil and decay; such as milk, flesh, and fruit (excepting dried dates, or other fruit kept in store); the prophet having expressly interdicted it for these articles. Nor for fruit upon the tree, or grain upon the stalk; these not being considered in custody. Nor for any intoxicating liquor; which is illegal or doubtful property. Nor for a drum, or other musical instrument of small value, and used for amusement only. Nor for a koran, though ornamented; as the custody of it is on account of its contents, not for the binding or ornaments; and moreover the person taking it may plead that his intention was to read it only. Nor for any other book, except a book of accounts the contents of which not being the object of the theft, the paper, and other materials of which it is composed, are deemed appreciable property. Nor for the door of a mosque, as this is not an object of custody. Nor for a crucifix, chess-board, or chess-pieces, though of gold; as the thief may excuse himself by saying that he took them with a view to destroy them, being things prohibited. Nor for stealing a free-born infant, with ornaments on his body; because a free person is not property; and the ornaments are appendages only; besides which the thief may plead that he took up the infant, when crying, with a view to appease it, or to deliver it to its nurse. Nor for stealing an adult slave; as such an act is ascribed rather to violence, or fraud, than to theft; but if an infant slave be stolen, according to Aboo Huneefah, and Imam Mahomed, amputation for theft is incurred; but Aboo Yoosuf holds a different opinion, on the ground that a slave though considered to be property as such, is not property with regard to his original nature, as a man. Nor for a dog, or lynx; because such an animal is free by nature, and there is a difference of opinion respecting the property of them."

Further conditions in regard to the prosecution and the possession or value of the property, &c., requisite to legalize the award of amputation.

3160. "A sentence of amputation cannot be passed upon a thief, without the attendance and prosecution of the person whose property has been stolen, or his representative. The reason assigned in the Hedaya is, "because prosecution is essential to the manifestation of theft; and, with respect to this rule, it matters not whether the theft be established by confession, or by evidence; because an offence, committed against the property of another, can in no way be rendered manifest, but by the prosecution of the aggrieved." Besides the owner of the property stolen, however, a depositary, a borrower with or without interest, a hirer, an usurper, a partner in concerns of *mozárubut*, or *moostubzá*, a mortgagee, a father, or any other legal guardian, having possession of the stolen article, is declared competent to prosecute in cases of theft. If the stolen property be again stolen from the possession of the first thief, and the latter have suffered amputation, it cannot be demanded against the second thief; but if the first thief be not convicted, or have not undergone the punishment for theft, it may be enforced, at his requisition, against the second thief. If the stolen property be returned by a thief to the owner before any prosecution is instituted against him, he cannot be sentenced to suffer amputation. But this sentence is not prevented by a restoration of property after the charge is preferred, and evidence adduced in support of it. Execution of a sentence for amputation is stayed however by the gift or sale of the stolen property from the owner to the thief; whether prior or subsequent to the judgment of the kazee. Amputation is likewise stopped, if, after the sentence, a reduction in the market value of the stolen article bring it below the legal standard of ten dirms; but this principle does not apply to any other deterioration, from damage to the property, or any cause excepting a fall of price. It is declared in the Hedaya that "if, after witnesses bearing evidence to a theft, the thief plead that the article, alleged to have been stolen, is his own property, his hand is not to be cut off; although he produce no evidence in support of his plea." Shafeï justly objects to this doctrine, "that every thief has it in his power to plead the property being his own; and therefore if punishment be remitted on such a plea, the door of it must be altogether closed." But the *Huneefeeyah* doctors reply, that "doubt occasions the remission of punishment; and doubt is established by the plea, since it may possibly be true:" they add that Shafeï's objection is of no weight "because retraction and denial are admitted after confession, although a person confessing has it always in his power to retract and deny." But this reasoning, however applicable to confessions, when there may be no other proof, is obviously inapplicable to a case established by evidence; and Shafeï's objection to the prevalent doctrine therefore remains, as noticed by Mr. Hamilton, "altogether unanswered," or, at least, unrefuted. The same rule is applied in the Hedaya to the case of two persons confessing a theft, one of whom afterwards pleads that the property was his own. In this case, it is stated, "amputation is not inflicted upon either; because the retraction is admitted with respect to the person retracting; and this gives rise to a doubt in regard to the other person, since theft is confessed by each of them as a joint act." Evidence of a theft jointly committed by two persons, one of whom only is present and on trial, will however convict the one present, without waiting the attendance of the absentee. On a trial for theft, if the person whose property is said to have been stolen, declare, even after conviction and sentence, that the property belonged to the party accused, and was held in trust for him; or that

the witnesses against him have given false evidence; or (if he have confessed) that his confession is erroneous; or make any other declaration, whereby a doubt can arise of the guilt and legal conviction of the prisoner, he is not to suffer amputation. Other cases, in which a sentence of mutilation, or the execution of it, is prevented, are detailed in the *Futáwá-i-Aálumgeeree;* but a further specification of them appears unnecessary. It will be sufficient to add, that any stolen property found in the possession of a thief must be restored to the owner; and that the latter has an option to demand the value of his property, or the prescribed punishment, previously to execution of the sentence; but after suffering amputation, the thief is not further answerable for the property. Any sale or gift of stolen property by the thief is however declared null and void. And if another person, after punishment of the thief, destroy or consume it, he is answerable to the owner for the value of it. One punishment for theft, by amputation, as in other cases of hudd, includes all past instances; but does not preclude a further punishment for any future repetition of the offence, as far as the restrictions before stated, concerning amputation, may admit of it."

Restoration of the property.

One amputation for theft includes all past instances.

Highway robbery; definition, and the five conditions requisite for the infliction of the prescribed penalty.

3161. Sarika-i-kobra, or highway robbery, is defined to consist in a party going forth with force capable of resistance for the purpose of committing robbery; or a single person going forth with that intent prepared for resistance, under confidence in his strength and courage. There are five conditions requisite for the infliction of the prescribed penalty: 1*st.* That there be force sufficient to overcome opposition from travellers, whether the robbers be armed with mortal weapons or not. 2*nd.* That the act be committed at a distance from any city, the extent of that distance being a point on which the authorities differ. 3*rd.* That the crime be perpetrated within the limits of a Mussulman state (*dar-ool-islam*). 4*th.* That all the conditions of the minor species of larceny (sarika-i-soghra) be found to exist, the robbers also being strangers to the robbed, and legally subject to punishment. 5*th.* That the robbers be seized before they repent, and before restoration of the property to the person robbed.

Four descriptions of robbers are specified with the penalties incurred by each.

3162. "Four descriptions of highway robbers are specified in the Hedaya, with the penalties incurred by each, upon conviction, according to their respective degrees of criminality. *First,* those who are seized before they have robbed, or murdered any person, or put any person in fear. *Secondly,* those who have committed robbery only; whether upon a Mussulman, or infidel subject. *Thirdly,* such as have perpetrated murder without robbery. *Fourthly,* such as have committed both robbery and murder. Of these descriptions, the first are to be imprisoned, until by their appearance and demeanor they show evident signs of contrition. The second are to suffer amputation of the right hand and left foot; provided the property taken be of such value, as, when divided amongst the whole of the robbers, amounts to ten dirms for each. The third class are to suffer punishment of death; and as it is inflicted by the right of God, for public example, and not to satisfy a private claim to kisas, the forgiveness of the heir of the slain is of no avail. With respect to the fourth and last class, it is optional with the imam, either to cut off a hand and foot, and then put them to death; or he may put them to death at once, without amputation: he may also order them to be crucified. It is further stated in the Hedaya that if a robber, in the predicament first mentioned (viz. who may be seized before he has

If the robbery is attended with wounding.

committed robbery or murder) maim or wound a person or persons, there is no distinct specific penalty (under the provisions of hudd) for the maiming or wounding, but he is liable to retaliation, or the fine of blood, under the rules of kisas for offences short of life, at the demand of the person upon whom the offence has been committed. If the robber have both plundered and wounded, he is to suffer the penalty of amputation (as one of the second description of robbers); and neither fine or retaliation can be demanded for the personal injury, the public punishment, as with respect to property in cases of theft, superseding the enforcement of private satisfaction. In like manner, if a robber suffer death, in execution of a sentence of hudd, nothing is due to the person robbed beyond a restitution of the property forthcoming, as already stated with respect to theft."

The whole of a gang of robbers are punishable for murder committed by any one of them.

Exceptions, in this and other cases, which bar a sentence of hudd.

3163. "If any one among a gang of robbers commit murder, the whole are liable to the prescribed penalty or to discretionary punishment extending to death;* "because," says the author of the Hedaya, "the punishment is, in this instance, considered as a penalty for the assault of the whole; which is established by each of them being aiding and abetting to the others.† But if any one of the band of robbers be an infant, or a lunatic, or dumb, or a relation within the prohibited degrees of the person robbed, or murdered; or if any of the robbers have a joint interest in the property plundered; or such property be not in legal custody with respect to any one of the robbers; or if the property taken amount not in value to ten dirms for each robber; or lastly, if the person robbed or murdered be not a Mussulman, or under the permanent protection of a Mahomedan government; a sentence of hudd is prevented, against any of the party.‡ This sentence is also barred by repentance of the robber before he is apprehended and brought to trial; it being declared in the koran, concerning robbers, that "the fixed penalty shall be inflicted upon them, excepting such as repent before the magistrate lays his hands upon them." But the right of the individual, for private satisfaction, holds in this case, under the rules of kisas; and the robbers are responsible for the property taken by them. A robber delivering himself up, with the property, or the value of it, is not to be prosecuted for the stated punishment; nor is any penalty to be inflicted for an old offence, upon a person, who, long before his trial, has ceased to rob, and follows an honest livelihood."

* *N. A. R. vol.* 1, *page* 312.

† *v. para.* 3045*n.*

‡ *v. paras.* 130 *and* 131.

SECTION V.

OF RECEIVING STOLEN PROPERTY.

Terms to be used in commitment.

3164. In commitments for knowingly receiving or keeping stolen or plundered property the term "thangeedaree" is not to be used; the charge is to be worded (in Persian) thus: دیده و دانسته گرفتن و داشتن مال سرقه یا مغروته. Const. No. 857.

The nature of the offence by which the property has been acquired is to be noted in the charge.

3165. An addition is to be made to the charge in all such cases, with the view to show distinctly whether the property illegally possessed was acquired by theft, burglary, dacoity, highway robbery, or thuggee. The reason of such addition is that persons

accused of receiving property, stolen or plundered by thuggee or dacoity, may be committed under Act XVIII. 1839 and Act XXIV. 1843 by any magistrate within the territories of the East India Company,(a) and may be tried by any court, which would have been competent to try him, had his offence been committed within the zillah, where that court sits;* whereas in the trial of charges for the guilty receipt or purchase of property acquired by theft, burglary, or highway robbery, it is essential to its legal validity, that regard be had to the jurisdiction within which the offence was perpetrated, and to the competency both of the committing and trying officer to take cognizance of the same. The *Calcutta court* also observe that under the Acts above quoted, commitments for the crime of receiving property obtained by dacoity and thuggee may be tried by the session judge without the aid of a law officer or assessors†; whereas in the other cases referred to, the trial cannot be held without recourse to a law officer or to the provisions of Reg. VI. 1832: and they direct that session judges, who try a case without the aid of a law officer or assessors, shall denote on the face of the record the regulation or Act under which the trial is held.(b) C. O. *L. P.* No. 215, *W. P.* No. 217, of vol. 3.

* *v. paras.* 2955 *and* 3046

† *v. paras.* 2957 *and* 3048.

If trial is held without law officer or assessors, the authority is to be noted.

Jurisdiction.

3166. Unless there is positive evidence to the contrary, it is presumed that the receipt has taken place where the property is found, and not where the robbery has taken place. So, where the property has been found beyond the Company's territories, the prisoners have been released. N. A. R. vol. 2, page 80; and vol. 3, page 149.

Magistrate to be guided by the following rules.

3167. The magistrate is to be guided by the following rules in the investigation of charges preferred against individuals for the offence of receiving or buying stolen goods, cattle, jewels, money, or effects of whatever description, knowing the same to have been stolen. Reg. XII. 1818, sect. 4, cl. 1.

What cases *must* be committed.

3168. All prisoners who appear to the magistrate, from the investigation held by him, to be guilty of having purchased or received plundered or stolen property of any description knowing at the time of his purchasing or receiving the same that such property had been obtained in the perpetration of robbery by open violence, or of theft accompanied with any of the aggravating circumstances described in cl. 2, sect. 2* [*i. e.* aggravated cases of burglary] or cl. 2, sect. 3† [*i. e.* cases of theft which the magistrate must or may commit for trial before the sessions court] of this regulation, are to be committed by the magistrate to take their trial before the sessions court; and such persons, if convicted before the sessions court of the offence of receiving or buying plundered or stolen goods, cattle, jewels, money, or effects of whatever description, knowing at the time that such property had been obtained by robbery, or by theft accompanied with any of the aggravating circumstances described in cl. 2 of sect. 2, or cl. 2 of sect. 3, of this regulation, are to be sentenced by the session judge, according to the circumstances of the case, to such

* *v. para.* 3136.

† *v. paras.* 3078 *and* 3080.

(a) This construction deserves notice, because neither Act XVIII. 1837 nor Act XVII. 1839 expressly declares, that persons charged with the offence of unlawfully and knowingly receiving or buying property stolen or plundered by thuggee may be committed by any magistrate; the latter Act makes the offence triable by any sessions court; and it seems to be deduced therefrom that such commitments may be made by any magistrate.

(b) This latter portion appears to have been expressly excluded from their circular order by the *Western court*; and it would seem according to Const. No. 1074 (*para.* 2958) that the aid of the law officer or assessors cannot be dispensed with on the trials of prisoners charged with specific acts of receiving property which has been obtained by thuggee.

period of imprisonment as appears proper, in no instance however exceeding 14 years, and to corporal punishment [now commutable to 2 years' additional imprisonment]. Reg. XII. 1818, sect. 4, cl. 2.

Such trials may not be referred.

3169. Where a prisoner was convicted by a session judge, concurring with his law officer, of receiving plundered property knowing it to have been obtained by robbery by open violence attended with murder, it was held that he was fully competent to dispose of the case himself, and could not refer the trial to the nizamut adawlut. N. A. R. vol. 5, page 179.

When the amount or value of the property stolen exceeds 300 rupees, the receivers of any portion of it must be committed.

3170. The provision for commitment in sect. 4, Reg. IV. 1820,—which enacts that in cases of theft, where the amount or value stolen exceeds the sum of 300 rupees, the amount is to be deemed a circumstance taking the case out of the magistrate's jurisdiction as to passing sentence on the accused, and is to make it necessary for him to commit the accused for trial to the sessions court,—is applicable to purchasers and receivers of stolen property, knowing at the time that such property was stolen, when the amount or value of the property stolen exceeds 300 rupees. Reg. VI. 1824, sect. 4.

What cases *may* be committed;

3171. The magistrate is also empowered to commit for trial to the sessions court any prisoner charged with the offence of buying or receiving stolen property of whatever description, knowing at the same time that such property had been stolen, although the property may not have been obtained in the perpetration of theft accompanied by any of the aggravating circumstances described in cl. 2 of sect 2, and cl. 2 of sect 3, of this regulation, provided that the prisoner has been before convicted of the offence of buying or receiving stolen property, or of robbery, burglary, theft, or other heinous crime, or that the prisoner appears to be an habitual and professional receiver of stolen property, or a person of notoriously bad character;—and such person is, upon being duly convicted before the sessions court, to be liable to such punishment, within the limitations prescribed in the preceding clause of this section, as the session court judges proper to direct on a consideration of all the circumstances of the case. Reg. XII. 1818, sect. 4, cl. 3.

and what sentence may be passed in such cases.

Previous conviction of theft of 10 rupees not to be considered conviction of a heinous crime.

3172. A previous conviction of petty theft, not exceeding ten rupees, when unattended with any aggravating circumstance, is not to be deemed a previous conviction of a heinous crime, such as precludes the magistrate's judicial cognizance of a charge of buying or receiving stolen property, and requires that the prisoner be committed for trial before the sessions court, in the above provision. Reg. VI. 1824, sect. 5.

It is to be specifically mentioned in the futwas and abstract statement, that the offence was committed knowingly.

3173. Session judges are to be careful that their law officers state specifically in their futwas, declaring any persons to be convicted of receiving or purchasing stolen or plundered property, that such persons are convicted of having received or purchased such property "knowing the same to have been stolen or procured by robbery." And the judge is to enter the same specification in the abstract statements. C. O. No. 115 of vol. 1.

In all other cases of receiving or retaining possession of stolen property, the magistrate may pass what sentence.

3174. With exception to the cases above-mentioned, the magistrate is to hear and determine, without reference to the sessions court, all other cases in which individuals are charged with the offence of buying or receiving stolen property of whatever description, knowing it at the time to have been stolen; or with the offence of having in their possession property obtained by theft or robbery, and knowing at a period of time subsequently

to its first coming into their possession, that such property had been so obtained, notwithstanding which they have kept the stolen property in their possession without restoring it to the owner or giving information to the local police officer or magistrate. In such cases the magistrate, after having duly considered the evidence in support of the prosecution, the defence of the prisoners, and the evidence of the witnesses designated by the prisoners, is to proceed to pass sentence of conviction or acquittal: if the prisoners are convicted, the magistrate is empowered to sentence them to imprisonment with hard labor for a period not exceeding in any case 2 years, and to corporal punishment [now commutable to one year's additional imprisonment]. Reg. XII. 1818, sect. 4, cl. 4.

Magistrate may not punish one, if the commitment of any other prisoner is necessary.

3175. A magistrate is not competent to punish receivers of stolen property in any case, the aggravating circumstances of which render the commitment for trial of any of the prisoners necessary; but he must commit them for trial under the rule contained in cl. 2, sect. 4, Reg. XII. 1818. Const. No. 857.

The magistrate in his roobakaree, and judge in his statement, are to note the circumstances leading to commitment.

3176. The magistrate is to make a point of recording, in his roobakaree of commitment, the express circumstance or circumstances of aggravation, which have led him to commit a case of receipt of stolen property instead of disposing of it himself; and the session judge is to give the same information in his abstract statement of sentences passed without reference. C. O. No. 239 of vol. 1.

Property acquired by burglary is property acquired by theft.

3177. The knowingly receiving property acquired by burglary, comes under the general definition of property acquired by theft; and a discretion is left as to the degree of punishment according to the circumstances. Const. No. 303.

It does not necessarily follow that the possession of stolen property, the knowledge that it was so acquired having subsequently arisen, is criminal. The magistrate has a discretion not to punish at all. And if the judge pass a higher sentence than for 3 years' imprisonment, he is to state the grounds of such sentence in his abstract statement.

3178. Although the act of having possession of property obtained by theft or robbery, without having received it with the knowledge that it was so obtained, such knowledge having only subsequently arisen, is punishable under the Mahomedan law and the above provisions, yet it is not intended to declare that it is in every instance punishable; as it must obviously depend on the circumstances of each particular case, whether the act in question is, or is not, a criminal offence: under the discretion which cl. 4, sect. 4, Reg. XII. 1818 allows to the magistrate, he is considered to have a discretion not to punish at all, in cases in which no criminal act appears to be fairly imputable to the *bonâ fide* purchaser or possessor of property acquired by robbery or theft. Where it is determined, on the circumstances, to be an offence, and is left punishable by the futwa at discretion, (as the act is evidently of a very different complexion from that of being a criminal receiver of stolen goods, and thereby a principal encourager of goods being stolen) it is the opinion of the nizamut adawlut that it should be punished as a misdemeanor not of a very serious nature; and that a sentence equal to that, to which the magistrates are limited by the above provisions, is sufficient in most cases as a maximum of punishment: accordingly, in any instance where a higher penalty is adjudged, a particular statement of the grounds of such sentence is to be inserted in the abstract statement of prisoners punished without reference. The above remarks show how essential it is, in the trial of charges for receiving stolen property, or property acquired by robbery, not only that the evidence to ground a conviction should go to the mode and circumstances of the receipt, and not to

the mere fact of possession; but also that the law officer, where it is intended by him to convict of the criminal receipt, should specify the same clearly and precisely in the terms made use of in the futwa. C. O. No. 215 of vol. 1.

It is not necessary to prove that the person robbed had possession of the property up to the time of his death.

3179. Where a person was discovered dead in his house, and his jewels afterwards found in the possession of the prisoner, the latter was convicted of receiving property, knowing it to have been obtained by theft attended with murder, although nothing was adduced to show the period of time up to which the property had remained in the possession of the deceased. N. A. R. vol. 2, page 425.

Receivers of stolen property may be punished, though the thieves have not been convicted.

3180. It is hereby explained, that persons, charged with the offences specified in the preceding clauses of this section, may be brought to trial and sentenced to punishment, although the actual perpetrators of the theft or robbery have not been convicted; provided, however, that the fact of the theft or robbery having been committed be established, and it be proved that the purchaser or receiver knew that the property in question had been obtained by theft or robbery. Reg. XII. 1818, sect. 4, cl. 5.

The record of a conviction of theft is not sufficient to prove the theft, if the alleged receiver desires to disprove it.

3181. On general principles, and under the provisions of the Mahomedan law of evidence, the record of the conviction of a person charged with theft is not conclusive proof against an alleged receiver of stolen goods to prove the theft, if the latter desire to controvert the propriety of the conviction, and produce evidence to negative the fact of a theft having been committed. Const. No. 217.

The amount of punishment awarded to the thief is no criterion for the sentence to be passed on the receiver.

3182. In answer to a court of circuit who objected to the practice of sentencing receivers of stolen property to a more severe punishment than that which is awarded to the thief, the nizamut adawlut replied that they were not prepared to narrow the discretion confided to the magistrates by the above provisions; as the offence of receiving stolen property admits of so many shades of difference, that it would be impracticable to define, with any degree of accuracy, under what circumstances a case of that description should be considered to be of an aggravated description or otherwise. Const. No. 466.

Precedents.

3183. Where the prisoner was convicted of receiving property, knowing it to have been obtained by theft attended with murder, he was sentenced to imprisonment for 14 years; *N. A. R. vol.* 2, *page* 425. On conviction of the guilty receipt of embezzled property, the wife and brother of one of the persons convicted of the actual embezzlement were sentenced, for retaining possession of and concealing part of the property, to imprisonment for 2 years; and another also a relation of one of those persons was sentenced, for disposing of part of the property, to imprisonment for 4 years; *N. A. R. vol.* 5, *page* 1. Where stolen property was found in the houses of the prisoners two years after the theft, and there was no proof that, at the time of receiving it, they knew it to be stolen, they were acquitted; *N. A. R. vol.* 2, *page* 325.

Restitution of stolen property.

3184. There is no regulation which prohibits the delivery to the person robbed of any articles, which are proved to belong to him, or to have been purchased with money stolen from him. The officer disposing of the case must exercise his discretion in the disposal of the property. Const. No. 604.

Not only the stolen money or property may be restored; but also the property purchased with the stolen money.

3185. Three sonars were convicted of embezzling 1752 rupees from some travellers, who rested one night in their house; on a subsequent search of their premises 241 rupees were recovered; certain mohajuns gave up 300 rupees with which the son of one of the prisoners had purchased gold mohurs from them; and other sums were recovered from a person from whom the same man had redeemed certain ornaments, and from a mokhtar who had placed part of the stolen money with a banker. It was decided, in accordance with both the Mahomedan and the English law, that the person from whom the money was embezzled was entitled to the restitution of it, whether the rupees were the identical coins embezzled or others restored in lieu of them; and the court directed payment of the whole amount recovered to be made to the prosecutor.(a) N. A. R. vol. 5, page 1.

Magistrate to furnish certificate of the execution of order for restoring stolen property.

3186. The session judge is to require the magistrate to certify the execution of all orders for the restoration of stolen property, either in the return endorsed on the warrant of the sessions court, or in a subsequent return to be made as soon as the execution of the order admits: and such certificates are to be carefully preserved among the records of the sessions court. C. O. No. 5 of vol. 1.

(a) In English law, by 7 and 8 Geo. 4, cap. 29, sec. 57, in order to encourage the prosecution of offenders, it is enacted, "that if any person, guilty of any such felony or misdemeanor as aforesaid, in stealing, taking, obtaining, or converting, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever, shall be indicted for any such offence by or on behalf of the owner of the property or his executor or administrator, and convicted thereof, in such case the property shall be restored to the owner, or his representative; and the court before whom any such person shall be so convicted shall have power to award, from time to time, writs of restitution for the said property, or to order the restitution thereof in a summary manner: provided always, that if it shall appear before any award or order made, that any valuable security shall have been *bonâ fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument shall have been *bonâ fide* taken or received, by transfer or delivery, by some person or body corporate for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had, by any felony or misdemeanor, been stolen, taken, obtained, or converted as aforesaid; in such case the court shall not award or order the restitution of such security." The court cannot, under the above provision, order a Bank of England note, which has been paid and cancelled, to be delivered up to the prosecutor of an indictment against the party who stole it. Where a prisoner was convicted of stealing money, and it appeared that he had left in the care of another a horse, which it was clear, from the evidence, he must have purchased with the stolen money, the judge made an order for the delivery of the horse to the prosecutor. *Roscoe's Digest.*

CHAPTER II.

OF ARSON.(a)

Regulation law.

3187. There is no specific provision in the regulations for the punishment of arson; but, wherever it is mentioned, it is ranked among heinous offences; and the offence of "setting fire to any house, village, or town," is declared not bailable.* It is therefore subject to the general rules of discretionary punishment; and sect. 10, Reg. IV. 1797, implies that a person convicted of "burning houses or property" is liable to a sentence of transportation for life. There are only two cases of this nature among the reports; and both appear to have been misdemeanors only. One case is thus described:—"The prisoner is stated by the witnesses to have been seen on the top of the chopper of his house, with a lighted bundle of grass in his hand, shouting with a loud voice, 'So, let all the people take their goods out of their houses, for I am setting fire to my chopper;' according to which he did set fire to the chopper and fled: he was pursued and taken; the flames were extinguished by other persons, and little harm was done: no one of the witnesses could tell the motive of the prisoner, and there did not appear to have been any quarrel or altercation with the prisoner:" the futwa in the nizamut adawlut declared the prisoner liable to tazeer by seasut, and he was sentenced to imprisonment for one year without labor and irons. *N. A. R. vol.* 3, *page* 230. In the other case, the prisoners, who cultivated a piece of land of which the proprietor had lately granted a lease to an indigo-planter, evinced a disposition not to relinquish the land, and threatened to burn the factory, if they were deprived of possession; and one of them at night set fire to a heap of old and worthless indigo weed distant only six paces from the factory, while the other stood by aiding and abetting, and the weed was burnt; the former was sentenced to imprisonment without labor and irons for one year, and the latter (in consideration of his youth, 14 years) for four months. *N. A. R. vol.* 3, *page* 362.

* *v. para.* 1140.

Precedents.

(a) By the English common law, the offence of arson is a felony, and is defined by Lord Coke to be the malicious and voluntary burning the house of another, by night or by day. It must be the house of another; the burning of a man's own house is no felony at common law; but if a man set fire to his own house, maliciously intending thereby to burn the adjoining house belonging to another, if the latter house is burned, it is felony; if not, it is a great misdemeanor. To constitute arson at common law, it must be proved that there was an *actual* burning of the house, or of some part of it, though it is not necessary that any part should be wholly consumed, or that the fire should have any continuance, but be put out, or go out of itself. The *setting fire* to the house of another, maliciously to burn it, is not a felony, if either by accident, or timely prevention, the fire does not take place. Where a house has been robbed and burnt, proof that part of the stolen property was found in the possession of the prisoner is evidence to show that he committed the arson. The act of burning must be proved to have been both wilful and malicious, otherwise it is only a trespass and not felony: but where the primary intention of the offender is to burn only his own house (which is no felony), yet if in fact other houses are thereby burned, being adjoining and in such a situation as that the fire must in all probability reach them, the intent being unlawful, and the consequence immediately and necessarily flowing from the original act done, it is felony; for the law in such case implies malice: and generally, if the act be proved to have been done wilfully, it may be inferred to have been done maliciously, unless the contrary be proved; the absence of malice or spite to the owner is no answer to the charge. The offence may be committed, not only with regard to a

CHAPTER III.

OF FRAUDULENT OFFENCES AGAINST PROPERTY.

Note.—The special provisions which regard the trial and punishment of native ministerial officers of government charged with extortion, corruption, embezzlement, and offences of the like nature, have already been detailed in section 3, chapter 5, of the second book; see page 357: in the following sections are given the rules which respect other classes of persons guilty of such offences, and the reported cases.

SECTION I.

OF EMBEZZLEMENT AND CHEATING.

Persons charged with embezzlement *may* be committed to the sessions.
* *v. para.* 2009.

3188. Reg. II. 1813* is not intended to repeal the Mahomedan law relative to the offence of embezzlement; and persons guilty of such offence, being punishable under that law, may clearly be committed for trial to the sessions court [if the magistrate thinks that the punishment, which he is competent to adjudge under the general regulations, is inadequate to the degree of criminality involved in the case]. Const. No. 543.

Civil judge how to proceed if a ministerial officer is guilty of embezzlement.
* *v. paras.* 1980 *et seq.*
† *v. para.* 3277.

3189. Although a summary enquiry into cases of embezzlement by ministerial native officers of the civil court may be conducted by the judge under the provisions of sect. 7, Reg. XVIII. 1817,* yet that officer is by no enactment empowered to commit for trial before the sessions court for the offence; the rule of cl. 2, sect. 14, Reg. XVII. 1817† is applicable only to cases of perjuries committed by parties in a civil suit actually pending before a judicial authority. The duty of commitment is left to the magistrate, to whom the judge should transmit his proceedings, if grounds appear to exist for subjecting the accused to a criminal trial; and the magistrate in committing or releasing the person charged with the offence is to act on his own judgment on a fair consideration of the evidence adduced. Const. Nos. 518 and 691.

A peon making away with money entrusted to, or collected by him, is guilty of a misdemeanor.

3190. The case of a peon, on the establishment of a government functionary, making away with money entrusted to, or collected by him, does not come within the meaning of Reg. II. 1813; such offences are to be considered as misdemeanors and punishable as such under the general regulations. Const. No. 1200.

Case of a moonsiff receiving petitions on plain paper, and

3191. A moonsiff and kazee, convicted of receiving petitions of plaint on unstampt paper contrary to the regulations, and appropriating to his own use the value of the stampt

dwelling house, but also with regard to all out-houses which are parcel of it, though not contiguous, or under the same roof.—Besides the common law, the various offences of burning houses and other property are now for the most part provided against by various statutes, under one of which a person unlawfully and maliciously setting fire to any dwelling-house, any person being therein, may be adjudged to suffer death. *Roscoe's Digest; and Archbold's Criminal Pleading.*

paper on which those petitions should have been written, was sentenced to imprisonment for one year without labor, and a fine of 50 rupees commutable to 6 months' further imprisonment, and to be dismissed from his appointment: a person, employed as a mohurrir in his office, convicted of being concerned in the same corrupt transactions, was sentenced to imprisonment for one year without labor. N. A. R. vol. 1, page 371.

appropriating the value of the stamps on which they should have been written.

3192. The treasurer of a collector's office was convicted of paying money out of the treasury under illegal and irregular orders of the collector, which he well knew were illegal, irregular, and fraudulent; the objection that he had not been confirmed in his office was not allowed, as he was *de facto* treasurer at the time of making the disbursements; and he was sentenced, although the collector himself had not been brought to trial, having effected his escape, to imprisonment without labor for 6 months, regard being had to the period during which he had already been in confinement. N. A. R. vol. 2, page 229.

Case of the treasurer of a collectorate paying money on the illegal and fraudulent orders of the collector.

3193. A putwaree of a government village, whose salary had been stopped by order of the revenue authorities, appropriated to his own use part of the collections in his hands to an extent not exceeding the amount of salary withheld; this was held to be embezzlement, and he was sentenced to imprisonment for one year. N. A. R. vol. 5, page 114. And a tuhseeldar, convicted of applying to his private use a certain sum of money, after he had reported it to the treasurer as received on account of government, was declared guilty of a misdemeanor under Reg. II. 1813, though the zumeendar, by whom it was paid, acquiesced in the appropriation: the prisoner having been in confinement for 19 months, the imprisonment already undergone was deemed sufficient punishment for the offence, and he was discharged. N. A. R. vol. 3, page 45. But where a tuhseeldar realized the amount of a debt due to him by a zumeendar from the proceeds of the estate of his debtor, such proceeds not having been specially paid as revenue, and the estate not being under legal attachment in his hands, he was not considered guilty of embezzlement. N. A. R. vol. 3, page 37.

Cases of subordinate revenue officers appropriating collections made by themselves.

3194. A tuhseeldar, convicted of having made unauthorized loans or advances to individuals in balance for one year, and supplying the deficiency in the public accounts by sums paid as revenue in the succeeding year, was held guilty of embezzlement, and sentenced to imprisonment for one year without labor. N. A. R. vol. 2, page 463.

Case of a tuhseeldar deducting from the collections unauthorized loans made by him to individuals in balance.

3195. As a surburakar under Reg. V. 1812 holds his appointment under sunnud from the collector, and the estate whilst under attachment is under the management of government through their officers, the collector and surburakar, a criminal prosecution on the part of government for embezzlement of rents collected will lie; but the provisions of Reg. II. 1813 are not applicable to the case. N. A. R. vol. 6, page 42.

Case of surburakar under Reg. V. 1812.

3196. A podar of a collectorate made away with a sum of money received by the collector for the purpose of being, and ordered by him to be, held in deposit: the money did not appear as an item in the memorandum of cash balance, &c., on a change of officers: the podar was held guilty of embezzlement of public money, and was sentenced to imprisonment for one year without labor. N. A. R. vol. 6, page 10.

Case of the podar of a collectorate appropriating money held in deposit.

Case of a gomashtah of a commercial resident appropriating advances.

3197. The gomashtah in the factory of a commercial resident was convicted of having received on a private account the sum of 2500 rupees of the public money, and converted it to his own use, and was sentenced to imprisonment for 2 years; and a writer in the factory was sentenced as an accomplice to imprisonment for one year. N. A. R. vol. 2, page 277.

Case of a dawk-moonshee making use of public money.

3198. A dawk moonshee, convicted of embezzlement, or rather of making use of the public money, to the extent of 25 rupees, was sentenced, adverting to the confinement and disgrace which he had already undergone, to imprisonment for 6 months without labor. N. A. R. vol. 4, page 332.

Case of a cash-keeper removing public money, the intent to embezzle not proved.

3199. A cashkeeper on the establishment of a tuhseeldar, was convicted of having removed a sum of money from the public treasure chest without authority; and, although he might not have intended eventually to embezzle the money, was held guilty of a misdemeanor within the provisions of Reg. II. 1813, and sentenced to imprisonment in the civil jail for one year. N. A. R. vol. 2, page 376.

Case of a private servant guilty of embezzlement.

3200. A servant attached to the imambarrah of Hooghly was convicted of embezzlement, in having fraudulently made away with five bags of money containing 5000 rupees from the treasury of the trust-estate above mentioned, and substituted five bags of pice in lieu thereof, and was sentenced to imprisonment for 5 years without labor. N. A. R. vol. 4, page 166.

Case of a private servant making use of money given to him to be employed in a particular manner.

3201. A private servant, the mohurrir in an indigo factory, converted to his own use a sum of money given to him by his employer to pay the expences of a criminal prosecution which the prisoner was about to institute; and retained in his possession with the seal unbroken a letter containing a bank-note for 500 rupees, which he had been directed to put into the post office; being committed on a charge of theft and retaining knowingly in his possession stolen property, he was found guilty of embezzlement, and sentenced to imprisonment for two years without labor. N. A. R. vol. 4, page 152.

Private agent falsifying accounts held guilty of a breach of trust only.

3202. A private agent falsifying his accounts, and embezzling the money of his employer, was held guilty of a breach of trust only, more properly cognizable in the civil than in the criminal court. N. A. R. vol. 1, page 274.

The fraudulently obtaining possession of property is not punishable as theft. If the magistrate considers such case beyond his general powers, he must commit it to the sessions.

3203. The obtaining possession of property by fraud, is not punishable as theft under the provisions of Reg. XII. 1818; if, in such case, the magistrate considers that the punishment which he is competent to award under his general powers is inadequate to the degree of criminality of the offence, he must commit the offender for trial before the sessions court. Where a prisoner was convicted before the magistrate of having fraudulently passed an unfinished and unsigned note of the India bank, purporting to be for one hundred rupees, and having thereby fraudulently obtained possession of cloths to the value of one hundred rupees, and the magistrate sentenced him to stripes and imprisonment with labor for two years; the nizamut adawlut annulled his order as illegal, and directed him to commit the prisoner for trial before the session judge. Const. No. 684.

The execution of two sales of the same estate to several persons, is a fraud.

3204. Where the prisoners were convicted of having executed two sales of the same estate to several persons, they were held guilty of fraud; but as they had been tried on a charge of forgery in having fraudulently antedated one of the deeds of sale to the preju-

dice of the first purchaser, they were discharged without punishment, the offence of which they were convicted being held distinct from that charged: at the same time it was declared that they were still liable to be tried for the fraud. N. A. R. vol. 2, page 50.

3205. A zumeendar, shortly after having granted a lease of certain lands, executed a fictitious lease to himself in the name of another person with a view to oust the first lessee. This was held to be a fraud punishable by the criminal courts; and having been committed to take his trial for forgery and fraud, on separate and distinct counts, he was sentenced to pay a fine of 5000 rupees. N. A. R. vol. 6, page 2.

So, where the second engagement was a fictitious lease from the lessor to himself under another name.

3206. A fraud on the post office, by means of procuring a frank on a false pretence, was held punishable by a session judge, under the discretionary power vested in him by cl. 7, sect. 2, Reg. LIII. 1803,* by a pecuniary fine commutable in default of payment to a short imprisonment. N. A. R. vol. 3, page 130.

Obtaining a frank on false pretences.

* *v. para.* 888.

3207. The offence of using weights and measures short of what is recognized as the current standard of the place or district, is punishable as a fraud by the magistrate under the general regulations. The magistrate, however, cannot prescribe a current standard of weight. Const. No. 1274.

The using false weights or measures is a misdemeanor.

3208. False personation(a) for one's own advantage is an offence under the Mahomedan law; no specific penalty is laid down for the offence, but the punishment is at the discretion of the hakim with a view to restrain the offender, respect being had to the circumstances of the offender, and the character of the offence, which is apparently in itself of a trivial nature. A prisoner, who claimed the raj and zumeendarce of Burdwan, was convicted of false personation for his own advantage, and was sentenced to pay a fine of 1000 rupees, and in default of payment to imprisonment in the zillah jail for six months. N. A. R. vol. 5, page 122.

False personation.

3209. A mokhtar, in attesting the confession of a person charged with a criminal offence, wrote a false name, in order to evade being sworn on the trial; and was sentenced on conviction to imprisonment for one year. N. A. R. vol. 5, page 20.

Case of a mokhtar attesting a confession with a false signature.

SECTION II.

OF EXTORTION,(b) BRIBERY, AND CORRUPTION.

3210. If a police tuhseeldar, or a police darogah, or any officer under his authority, is guilty of corruption, extortion, or oppression, or commits any act repugnant to this regulation, he is liable to be committed by the magistrate to take his trial for the same

Police officers guilty of corruption, &c. may be prosecuted in the criminal *or* in the civil court.

(a) The bare fact of personating another for the purpose of fraud, is no more than a cheat or misdemeanor at common law, and punishable as such: in most cases of this kind, however, it is usual, where more than one are concerned in the offence, to proceed as for a conspiracy. *Russell and Roscoe.*

(b) In English law, extortion is defined to be the taking of money by an officer by colour of his office, either where none at all is due, or not so much is due, or where it is not yet due. So the refusal of a public officer to perform the duties of his office until his fees have been paid, is extortion. So it is extortion for a ferryman to take more toll than is due by custom. So when the farmer of a market erected such a number of stalls that the

before the sessions court, or to be prosecuted for damages in the civil court, at the option of the party injured. *Beng.* Reg. XXII. 1793, sect. 22. *Ben.* Reg. XVII. 1795, sect. 20. *Ced. Prov.* Reg. XXXV. 1803, sect. 21. C. O. No. 35 of vol. 1.

Bribery and corruption on the part of native ministerial officers how punishable.

3211. Bribery and corruption on the part of native ministerial officers in the revenue [or any other] department, clearly amount to a misdemeanor according to the Mahomedan law, and are punishable as such by the session judge under the rule laid down in cl. 7, sect. 2, Reg. LIII. 1803; and by the magistrate to the extent of the powers vested in him by the regulations, when such punishment appears to him, on a consideration of all the circumstances of the case, to be adequate to the degree of criminality of the accused. Const. Nos. 237, and 1002.

Case of commitment when the magistrate was competent to pass final sentence.

3212. Where a police burkundaz was charged with taking a bribe of three rupees, and was committed to take his trial for that offence, the nizamut adawlut held that the magistrate under the above rule was fully competent to pass the final sentence, and quashed the proceedings held before the session judge, as well as the commitment, directing the magistrate to dispose of the case himself. N. A. R. vol. 5, page 43.

In such cases prosecutor may be required to give security for his attendance.

3213. A magistrate is competent, whenever he may see reason to suspect any charge of corruption or extortion brought against his police officers to be false and unfounded, to call on the person preferring the charge to give security for his attendance until the final decision of the case. Const. No. 731.

If a charge of corruption is not proved, the magistrate may commit the accuser for perjury, if he thinks proper.

3214. A charge of corruption made before a magistrate not having been established, the magistrate is authorized to commit the accuser to take his trial for perjury at the instance of the party accused, should he find sufficient grounds for so doing; and the commitment is not illegal, though made pending an appeal from the magistrate preferred by the original accuser to the sessions court.(a) With a view however to avoid conflicting decisions, it was considered advisable to postpone the trial for perjury, until the appealed case was disposed of; the question of the prisoner's being innocent or guilty of the alleged perjury, resting on the truth or falsehood of the original charge. N. A. R. vol. 1, page 263.

The giving a bribe is a misdemeanor;

3215. The act of giving bribes to the amlah of a public officer for corrupt purposes, is clearly a misdemeanor both according to the English and Mahomedan law; and, though not specifically mentioned in the regulations, the individual committing it is unquestionably liable to a criminal prosecution. Const. No. 522.

and therefore the person administering it cannot be called upon to criminate himself.

3216. As the delivery of a bribe is a criminal act, and renders the person delivering it subject to a criminal prosecution as well as the receiver, a court of justice cannot compel a person to give evidence on oath touching a bribe, alleged to have been administered by himself. Const. No. 757.

The sufferers in a case of extortion are competent to give evidence against the accused.

3217. The Mahomedan law rejects, in a case of extortion, the evidence of all persons who have contributed to the extortioner's demand; but this doctrine has been twice

market people had not space to sell their wares, it was held that the taking money from them for the use of the stalls was extortion. Several persons may be indicted jointly, if all are concerned; for in this offence there are no accessaries, but all are principals. *Roscoe.*

(a) Under the present law, an appeal would not lie from the order of a magistrate dismissing the charge.

overruled, being considered by the nizamut adawlut absurd and inadmissible. N. A. R. vol. 2, page 341; and vol. 4, page 286.

Moonsiffs, sudder ameens, and principal sudder ameens, guilty of corruption, &c. not liable for error of judgment. Prosecution not allowed without the sanction of the judge.

3218. Moonsiffs, sudder ameens, and principal sudder ameens, are liable (in addition to an action in the civil court) to a criminal prosecution for corruption, extortion, or other misdemeanor committed by them in the discharge of any part of their duty; and, on conviction before the sessions court, are subject to fine and imprisonment proportionate to the nature and circumstances of the case; but no moonsiff, sudder ameen, or principal sudder ameen, is liable to be prosecuted for want of form or for error in his proceedings or judgments; nor is any process to be issued against any such officer who is charged with corruption, extortion, or any oppressive and unwarranted act of authority, unless the judge is previously satisfied by sufficient evidence, that there is reason to believe the charge to be well founded. Reg. XXIII. 1814, sect. 10, cl. 2; and sect. 67. Reg. V. 1831, sect. 26, cl. 5.

Such cases are cognizable in the first instance only by the civil judge; he may make the case over to the magistrate, or direct the government vakeel to prosecute, but he cannot direct the commitment.

3219. Under the above rule a charge of bribery, corruption, or extortion against a moonsiff is cognizable in the first instance only by the civil judge, who, after the requisite preliminary enquiry, is either to give or refuse his assent to a criminal prosecution; which in the former case, should be conducted by the complainant before, and be disposed of by, the magistrate as in any other case of misdemeanor. But this is not to be considered as barring the right of the judge to direct the vakeel of government to prefer a charge of bribery, &c., against a moonsiff, and to conduct the criminal prosecution on the part of government, whenever he may deem this measure expedient for the ends of justice. The judge, however, must confine himself to the preliminary enquiry, and cannot direct the magistrate to commit the case to the sessions; and where a judge pursued a different course, the trial was quashed by the nizamut adawlut. Const. Nos. 781, and 1069. N. A. R. vol. 5, page 151.

Ameen appointed for partition of estate guilty of corruption.

3220. If an ameen [appointed by a collector to make the partition of an estate] is convicted before the magistrate of the zillah of receiving, or allowing any other person to receive, directly or indirectly, any money or effects, or other property from the sharers, or from any person or persons on their behalf, in opposition to his oath [in which he declares that he will not directly or indirectly receive or allow any other person to receive any fee, present, or reward whatever, from any of the sharers or any persons on their behalf, on account of the division or any matter connected therewith; and that he will not derive any advantage or emolument from his appointment, excepting such as may be expressly allowed to him, and be authorized by this regulation], he is to be sentenced to pay a fine to government of three times the amount of the money or value of the property so received by him, or by any other person with his permission, and to imprisonment not exceeding six months; and all prosecutions before the magistrate under this clause are to be for a criminal misdemeanor at the instance of the collector of the district, through the vakeel of government. He is also liable to a suit for the same offence in the civil court. Reg. XIX. 1814, sect. 13, cl. 2.

Prosecution to be at the instance of the collector.

Native servant of a public officer extorting money on the plea

3221. If a native servant, or dependant, of any judge of a civil or criminal court of judicature, not being a public officer attached to the court, extorts, or receives, directly or

of using his influence in regard to the decision of a cause.

indirectly, any money or other valuable consideration, under any pretence whatever, from any party or person, on account of any suit to be instituted, or that is depending or has been decided in the court, he is to be committed as for a contempt of court, and to be punished by a fine equal to treble the sum of money extorted or received, or by imprisonment at the discretion of the court; and the judge is required to discharge such servant or dependant, and never to employ him directly or indirectly, in his public or private capacity. If the offender does not appeal against the decree within the limited time, or if an appeal does not lie from the decision, or if the decision is confirmed in appeal, the court by which the final decree is passed, is to transmit a copy of it to the government, who, in addition to the penalties or punishments specified in the decree, are, if there appear grounds for so doing, to declare the offender incapable of serving government in any capacity. *Beng.* Reg. XIII. 1793, sect. 11. *Ced. Prov.* Reg. XII. 1803, sect. 14.

This does not apply to the case of a private servant taking money to procure an official situation.

3222. Where an individual presented a petition to a magistrate in court, stating that he had paid 200 rupees to a private servant of his (the magistrate's) for an official situation, who had failed to procure the appointment and to refund the money,—the nizamut adawlut were of opinion that the charge should not be investigated and decided agreeably to the above rule, as its provisions are exclusively applicable to the case of a private servant employing his influence with his master in the decision of a suit pending before the court. The magistrate was directed to exercise his discretion in passing orders in such cases, the petitioner if dissatisfied being of course at liberty to appeal. Const. No. 539.

Native officers employed in the customs, making unauthorized collections, liable to dismissal, and to a criminal prosecution.

3223. Any native officer employed at the custom houses or chokees, who is proved to have levied any collections whatever, either as customs, duties, commission, fees, or under any other denomination, excepting such collections as are or may be authorized by this or any other regulation subsequently enacted, is of course liable to be dismissed from his employment under the rules provided in such cases by Reg. V. 1804, and Reg. VIII. 1809. Complaints against native officers employed under the collectors of customs for offences of this nature, are moreover to be considered cognizable by the magistrates; and

What punishment may be adjudged in certain cases.

any such native officer, on being convicted before a magistrate of having detained or stopped goods in any unauthorized manner; or of having exacted, under any plea or pretence whatever, a present, fee, or other consideration for the passage of goods or otherwise, in violation of the regulations of government, is to be deemed guilty of extortion, and is liable to be sentenced to pay a fine, not exceeding 200 rupees, and to imprisonment not exceeding 6 months, or to corporal punishment [now commutable to imprisonment for one year], according to the nature and circumstances of the case, and the condition in life of the offender; and if the fine so adjudged be not paid, it is to be commutable to a further period of imprisonment, not exceeding 6 months, as provided with respect to other sentences of the magistrate by sect. 19, Reg. IX. 1807. The party aggrieved is at the same time at liberty to prosecute the offender for damages in the dewanny adawlut. Reg. IX. 1810, sect. 38.

So, native persons, not employed in the customs, exacting customs, or duties.

3224. All native persons, not being officers employed by government in the collection of the government customs, or authorized by any regulation to collect customs or duties, who exact customs, or duties, of any denomination, on any pretence whatsoever,

whether as principals or agents, are likewise to be deemed guilty of extortion; and on conviction before a magistrate are liable to the penalties of fine and imprisonment to the same extent, and with the same qualification for commuting the fine to further imprisonment if it be not paid, as the magistrate is empowered to adjudge against native officers convicted of extortion under the preceding section: and the party aggrieved is in like manner also at liberty to prosecute the offender for damages in the dewanny adawlut: but nothing contained herein is to be construed to authorize the magistrate to inflict corporal punishment in any such case on any ground whatever. Reg. IX. 1810, sect. 39.

Meaning of the term "exact."

3225. The term "exact" in the above sections, must be construed to apply to the actual collection, and not to the mere demand of the illegal duties adverted to therein; the demand however is a misdemeanor under the regulations and Mahomedan law. Const. No. 76.

This is not applicable to the case of a zumeendar collecting a cess established by custom, and sanctioned by revenue officers.

3226. The rules relative to the abolition of the sayer duties, and the above provision, are not to be held applicable to any item of sewaee collections or cess levied by malgoozars and others according to ancient custom, which has been or shall be sanctioned by a collector or other superior revenue authority, not being a tax on the transport, export, or import of goods or merchandise, or other tax or duty specifically prohibited: but after the settlement of any village or mahal has been made in the manner specified in sect. 9, Reg. VII. 1822, the rules and provisions aforesaid are applicable to all cesses and collections not sanctioned in the manner specified in that section. Reg. IX. 1825, sect. 9.

Example.

* *v. para.* 1901

3227. Thus, it was held that zumeendars could not be prohibited from levying "choongee," a cess sanctioned by established custom, within the precincts of their estates.* Const. No. 973.

Custom house officers guilty of corruption, and persons offering bribes to such officers, liable to what punishment.

3228. Any custom house officer whatsoever, who demands or accepts any gratuity, not authorized by any existing regulation or order of government, in consideration of doing, or of omitting to do, any act in his official capacity, is to forfeit for every such offence the sum of 500 rupees; and any person who offers a bribe to any custom house officer in order to induce such officer to act in a manner inconsistent with his duty, is to forfeit a like sum; and these penalties are to be adjudged, on conviction before any magistrate or justice of the peace of the town, district, or place where the custom house is established, by such magistrate, and in default of payment any person so convicted is to be committed to the civil jail of the city or district until the fine be paid, or for a period not exceeding six months. Act XIV. 1836, sect. 13.

Ghaut manjees not to be recognized by the authorities.

3229. The local authorities are not to interfere with ghaut manjees further than steadily to refuse to recognize their claims to make exactions, and promptly to punish every attempt illegally to enforce those claims, and especially the detention of boats without the consent of the owners, or other acts founded on pretended authority. The ghaut manjees are in fact agents for hiring boats, and of course are entitled to make a charge for their trouble; and therefore, beyond the above precautions, the suppression of the custom must be left to the mutual interests of the parties concerned in hiring and letting out boats. Const. No. 606.

Restitution of property obtained by false pretence or extortion.

3230. A magistrate is not competent to make a person repay, or restore money, or other property, obtained by false pretence or extortion, the said money or property not having come into the hands of the court; nor to compel the offender to execute a mochulka binding himself in a penalty to repay or restore the same. Const. No. 616.

Precedents.

Extortion—

by police officers;

3231. A police darogah convicted of levying a general contribution from the village, in which the witnesses to a case of theft under enquiry resided, was sentenced to imprisonment without labor in the civil jail for one year; *N. A. R. vol.* 2, *page* 341. When two burkundazes were convicted of extorting money by violence from persons in their custody on an accusation of affray, one of them who had been convicted on another charge of extortion at the same sessions, and sentenced to two years' imprisonment, was sentenced to imprisonment for an additional period of one year; and the other, who appeared less culpable, to imprisonment for 6 months; *N. A. R. vol.* 4, *page* 286. Two prisoners, not in the service of government, convicted of extorting several sums of money from the villagers under colour of a fabricated order, purporting to have been issued from a police thana, were sentenced each to imprisonment for 2 years; *N. A. R. vol.* 5, *page* 112. A tuhseeldar of a pergunnah and his jemadar, convicted of extorting bonds to a large amount from a zumeendar, and compelling him to grant a farm with a view of realizing the amount from the profits, were sentenced each to imprisonment for one year without labor in the civil jail, and to pay a fine to government of 1000 rupees, or in default of payment to twelve months' further imprisonment. *N. A. R. vol.* 3, *page* 37.

by persons not in the service of government;

by a tuhseeldar.

Police darogah allowing a criminal charge to be settled by private adjustment.

3232. A police darogah allowed a compromise of a case of theft to be effected by the relations of the parties concerned, and was afterwards charged with corruption therein; but his motive in so doing was not considered corrupt, as he had immediately reported the circumstances for the orders of the magistrate; and he was accordingly sentenced to be merely reprimanded for deviating from a specific rule in the regulations, which prohibits police officers from suffering accusations to be settled by private adjustment; [*see para.* 1058; but in some cases of theft and burglary the police officers may now allow such compromises to be made, *see para.* 1727]. *N. A. R. vol.* 1, *page* 180.

Corrupt receipt of money.

3233. A person convicted of the corrupt receipt of money, while in office under a collector, in order to procure from the collector an order for the removal of a sezawul, was sentenced to be dismissed from office, and to be imprisoned in the criminal jail for 3 years; *N. A. R. vol.* 1, *page* 377. A prisoner was charged with the corrupt receipt of 1500 rupees, in having, while holding the situation of cotwal, by his private influence procured the office of darogah for an individual for that sum: the receipt of a portion of the sum in question was established, and the prisoner was unable to prove on what account; but he was acquitted of the charge by the nizamut adawlut, as it appeared that the money had been paid long after his resignation of and secession from office, and as there was no sufficient proof of a corrupt agreement. *N. A. R. vol.* 2, *page* 448.

SECTION III.

OF EXTORTION BY DHURNA.

Magistrate how to proceed on receiving a charge of dhurna.

3234. On a complaint in writing being presented to a magistrate against any brahmin or brahmins, or against any other person or persons of whatever description, for sitting dhurna,(a) the magistrate, upon oath being made to the truth of the information, is to issue a warrant or summons (as the case may require) under his seal and signature, for the apprehension, or appearance before him, of the person or persons thus complained against. On the accused being brought before the magistrate, he is to inquire into the circumstances of the charge, and to examine the accused and the complainant, and also such other persons (whose depositions are to be taken on oath [or solemn declaration]) as are stated to have any knowledge of the misdemeanor alleged; and to commit their respective depositions to writing: and after this inquiry, if it appears to the magistrate that the misdemeanor charged was never committed, or that there is no ground to believe the accused to have been concerned in committing it, the magistrate is to cause him or them to be forthwith discharged, recording his reasons for the same. On the contrary, if it appears to the magistrate that the misdemeanor charged was actually committed, and that there are grounds for believing the accused to have been concerned in the commission of it, the magistrate is (except in the cases mentioned in sect. 7) to cause the accused to be committed to prison, or held to bail, according as in his discretion he judges proper, for trial before the sessions court; and is to bind over the complainant to appear and carry on the prosecution, and the witnesses to attend and give their evidence. Reg. VII. 1820, sect. 3.

Mode of trial before the sessions court.

3235. The trial of persons charged with dhurna, is to take place before the sessions court, in the same mode as is prescribed for other trials by the existing regulations; and in lieu of the vyavastha hitherto taken from the pundit,(b) the Mahomedan law officer of the

(a) "The offence denominated dhurna implies, in its received acceptation, the practice of illegal duress by individuals for the extortion of money, or for the recovery of debts without authority from the civil magistrate; and also without such authority for retaining or recovering the possession of land, or for carrying any other point of real, imaginary, or pretended interest or right."—"The act of dhurna is a misdemeanor punishable in Mahomedan law, under the head of zulm, or oppression." *Preamble to Reg. VII.* 1820. In the preamble to Reg. XXI. 1795, the offence is thus described:—"On similar principles" (*see the first portion of para.* 2895) "these brahmins, to realize any claim or expectation, such as the recovery of a debt, or for the purpose of extorting some charitable donation, frequently proceed either with some offensive weapon, or with poison, to the door of another inhabitant of the same town or village, and take post there in the manner called dhurna; and it is understood, according to the received opinions on this subject, that they are to remain fasting in that place until their object be attained; and that it is equally incumbent on the party, who is the occasion of such brahmin's there sitting, to abstain from nourishment until the latter be satisfied. Until this is effected, ingress and egress to and from his house are also more or less prevented; as, according to the received opinions neither the one nor the other can be attempted, but at the risk of the brahmin's wounding himself with the weapon, or swallowing the powder or poison, with which he may have come provided. These brahmins however are frequently obliged to desist, and are removed from sitting dhurna by the officers of the courts of justice without any ill consequence resulting, it having been found by experience, that they seldom or ever attempt to commit suicide, or to wound themselves or others after they are taken into the custody of government."

(b) It was formerly considered as an offence solely against the Hindoo law; and therefore the pundits were required to give an exposition of the law of the *shaster*; but now, as quoted in the previous note, it is considered as in the case of other crimes and misdemeanors, as an offence against Mahomedan law under the head of zulm.

sessions court is to write his futwa, declaring whether the offence charged is established or not against the accused. Reg. VII. 1820, sect. 4.

What penalties are adjudicable by the sessions court.

3236. On conviction of the offence of dhurna before a sessions court, the penalties adjudicable are to be as follow; namely, imprisonment in the civil jail for a term not exceeding one year, and fine not exceeding one thousand rupees, commutable if not paid to further imprisonment for a term not exceeding one year. Reg. VII. 1820, sect. 5.

Trials when referrible.

3237. Trials held before a sessions court in cases of dhurna, are referrible to the nizamut adawlut or not according to the rules applicable in other trials. Reg. VII. 1820, sect. 6.

In what cases magistrate may pass sentence, and to what extent.

3238. It is competent to the magistrates, in charges for the offence of dhurna, which they are of opinion, from the circumstances, do not require commitment to the sessions court, to hear the evidence against and for the accused; and, if they consider the accused to be convicted, to pass sentence of fine not exceeding two hundred rupees, commutable if not paid to imprisonment in the civil jail for a period not exceeding six months. Reg. VII. 1820, sect. 7.

Example of case in which the circumstances did not amount to dhurna.

3239. Where a person seated himself at the door of a modee's shop, distant a hundred paces from the house of the party whom he wished to compel to do him justice, and remained there without any nourishment, except sherbet, for 16 days, it was held that the circumstances did not constitute the offence of sitting dhurna. N. A. R. vol. 1, page 164.

Precedents.

Cases which occurred before the enactment of the above provisions.

3240. A prisoner convicted of sitting dhurna, and extorting a present sum of 25 rupees, and a bond for 165 more, in payment of an alleged debt, was sentenced to forfeit all title to the claim for the realization of which the misdemeanor was committed, and to pay a fine to government of 100 rupees, or in default of payment to be imprisoned in the civil jail for the period of 6 months: the court directed the magistrate, in the event of the fine being paid, to give the prosecutor 25 rupees out of the amount, in reimbursement of the sum extorted from him; and in default of the payment of the fine, or of a sufficient part of it to provide for the repayment of the above sum, to inform the prosecutor that he was at liberty to bring a civil action for the recovery of the same: *N. A. R. vol.* 1, *page* 205. Where the prisoner, having come to the prosecutor's house with a razor in his hand, cut himself on the thigh, and sat down at the door declaring that he would not stir thence until the prosecutor gave him 25 rupees, and the prosecutor thereupon gave him the sum demanded; he was sentenced, in consideration of the period during which he had already been in confinement (5 months), to be imprisoned in the civil jail for 3 months, and to pay a fine of 50 rupees to government, or in default to be imprisoned for a further period of 3 months: the same order was passed in regard to the reimbursement of the prosecutor from the fine, if paid, as in the last case: *N. A. R. vol.* 1, *page* 207. But both of these cases occurred before the enactment of Reg. VII. 1820.

Case attended with homicide in assisting in the suicide of one of the persons sitting dhurna.

3241. Where the prisoners, fakeers of a particular class called *sootrah shahi*, who go about beating sticks and consider themselves entitled to contributions from any bazar or fair they please to go to, were convicted of dhurna, and assisting in the suicide of one of their companions in furtherance thereof, they were sentenced, in consideration of their extreme ignorance and the other circumstances of the case, each to imprisonment for 5 years with labor: *N. A. R. vol.* 2, *page* 409. Where three prisoners were convicted of

having, in concert with several others, sat in dhurna over an old man aged 65, and of having thereby deprived him of food and water, in consequence of which he died the following day, two of them were sentenced to imprisonment for 2 years, and a third, in consideration of his youth, to imprisonment for 6 months: *N. A. R. vol.* 3, *page* 202.

Case attended with homicide of the person over whom the prisoners were sitting dhurna.

CHAPTER IV.

OF TRESPASS.

3242. Incl. 1, sect. 12, Reg. XX. 1817 (*see para.* 1711) and some other provisions of the regulations, slight trespasses are classed among petty offences cognizable by the magistrate, which the police are forbidden to entertain; but no specific punishment is prescribed.

Slight trespasses not cognizable by the police.

3243. Police officers are not authorized to levy fines on account of cattle trespassing. Const. No. 1176.

Police officers may not levy fines.

3244. The preceding paragraphs contain all that is to be found in the books concerning trespass; but since cattle trespass is a social evil very rife in this country, and of great magnitude both from its frequency and the injury which it causes to the cultivators, as well as from the constant quarrels and affrays which result therefrom, it would not be consonant to the express purport of this work if it were passed over in silence. The subject has often been under public discussion; and it is a question how far the magisterial authorities have the power to interfere, either in their police or judicial capacities. It may be as well therefore to examine first in what manner the English law views the offence. Blackstone says; "A man is answerable for not only his own trespass, but that of his cattle also: for, if by his negligent keeping they stray upon the land of another, and much more if he permits or drives them on, and they there tread down his neighbour's herbage, and spoil his corn or his trees, this is a trespass for which the owner must answer in damages; and the law gives the party injured a double remedy in this case; by permitting him to distrain the cattle thus *damage feasant*, or doing damage, till the owner shall make him satisfaction; or else by leaving him to the common remedy *in foro contentioso*, by action." Under this view trespass by cattle is considered, as by its nature it appears to be, a mere civil injury, an infringement of a private right rather than a public wrong. And though the Mahomedan law differs from the English code in some cases in punishing criminally the violation of mere private rights, yet in this instance, as far as I can ascertain, the only redress which it affords is by damages. It would seem then that without the express authority of some special regulation the criminal courts cannot take cognizance of such cases; and it appears to me that no authority of the kind exists. Some regulations indeed, as noted above, include "slight trespasses" among offences which are expressly subject to a criminal prosecution; but it appears from the context, the associa-

It is argued that the offence of cattle trespass is not judicially cognizable by a magistrate.

tion of the trespass with offences against the person, "adultery, fornication, calumny, abusive language, and inconsiderable assaults," that the term thus used was intended to refer only to certain petty cases in which under the English law there lies an action of trespass *vi et armis:* and our regulation law contains no other provision which may be construed to refer to trespass by cattle. This view of the power of the criminal courts is, I consider, strengthened by the enactment of a regulation* which specially empowers a magistrate to punish by fine and imprisonment "persons wilfully damaging, or causing to be damaged, indigo plant, by allowing cattle to trespass thereon;" but does not extend the general power vested in him by sect. 19, Reg. IX. 1807. So, in a draft Act read in council on the 1st November 1841,(a) but never made law, it was proposed to give the magistrate power to punish by fine, leviable by distress, persons negligently or wilfully allowing cattle to damage any species of growing crop. Neither of these laws would have been proposed, if the magistrate could punish cattle trespass under the general regulations; and we may safely conclude that the only remedy for the injured party, except in the case of indigo cultivation, lies in the civil court. It is also worthy of remark that the exception refers to parties who, it may be presumed, are better able to prosecute their claims by a civil action, and therefore less require the cheap and summary process of the foujdaree courts, than the owners of small crops, who are doubtless the most numerous class of sufferers by the offence in question.

* *Reg. V.* 1830, *sect.* 4; *see para.* 3246.

How far it seems that the police officers can legally interfere in cases of cattle trespass; and in what manner the person seeking redress may make the police officers instrumental in proving the identity of the owner of the cattle.

3245. But although a magistrate is not competent to take judicial cognizance of trespasses by cattle, yet it does not seem a necessary consequence that his police officers should be prohibited from interfering, as far as they legally can, to prevent the commission of the offence by ensuring the punishment of the wrong-doer. Where, as in India, there are no subordinate civil officers in each village, to whom the sufferer can look for assistance; where, in fact, there are no officers of government stationed throughout the country except those of the police-force; and where it is of great consequence to procure the best circumstantial evidence, supported by facts and testimony independent as far as possible of the parties immediately interested; it seems essential to allow the injured person such recourse to the thana, as may legally be maintained there, and as is least open to abuse. It is not however for the compiler of this work to suggest what in his opinion would be a wise enactment, or even to collate the opinions and suggestions of others on that point, however valuable: the following remarks are merely intended to point out the course which the

(a) *An Act for consolidating and amending the laws relating to trespasses by cattle.*—1. It is hereby enacted, that all persons who negligently or wilfully shall allow cattle to damage any species of growing crop shall, on complaint of any party injured, be liable, upon being convicted before any magistrate, to a fine not exceeding two hundred rupees for every such offence.

2. And it is hereby enacted, that it shall be lawful for every magistrate, before whom any person shall be convicted of the aforesaid offence, to levy the same by distress of any property of the offender, and at his discretion to apply the amount levied, or any part thereof, for compensating the party or parties injured; and, in case the fine or any part thereof cannot be levied, the offender shall be liable to be imprisoned for any period not exceeding two months, unless the fine, or the residue thereof, be previously paid.

3. And it is hereby provided, that nothing in this Act contained shall prevent any person from recovering compensation for any damage committed by cattle to any growing crop, provided he shall have received no compensation for the same under this Act, but not otherwise.

sufferer from cattle trespass may follow, in order to ensure redress from present injury and security from future loss, not only without any infringement of the law, but also in strict accordance with the spirit of its provisions. By the English law,—I quote from Comyns,* —"all chattels trespassing upon land may be distrained *damage-feasant.* A distress *damage-feasant* is a summary execution in the first instance; the distrainer must take care to be formally right. He must seize the cattle in the act, upon the spot; for if they escape or are driven out of the land, though after view, he cannot distrain them; he must observe a number of rules in relation to the impounding and manner of treating the distress. The cattle of A may be distrained *damage-feasant,* though put there by a stranger without his privity." Again,† "By the common law every distress ought to be impounded in a lawful pound. A lawful pound is either open or close: an open pound is every place in which the putting the cattle does not make the owner a trespasser, and where he may give them to eat and drink without trespass; be it a common pound erected on the manor for this purpose; or the close of the party who makes the distress; or the close or soil of a stranger with his leave: a pound close is where the goods are put into an house or other place, where the owner cannot enter to them. If cattle be impounded in a pound close, the impounder shall sustain them without allowance for it; but if they be put in an open pound, they shall be sustained at the peril of the owner. No distress of cattle shall be carried out of the hundred, &c., unless to a pound in the same county within three miles' distance." Now although we have no enactment which expressly legalizes the impounding of cattle, yet it would seem that a person finding cattle in the act of trespass and unguarded may fairly consider them as unclaimed property; and by cl. 16, sect. 16, Reg. XX. 1817‡ all unclaimed cattle are the property of government, and police officers are bound to forward all such, which may come into their hands, to the magistrate: this provision also says, "if any article of unclaimed property cannot be easily moved, the darogah is to make over charge of such article to the local zumeendar, manager, or head person of the village, until the orders of the magistrate in regard to its disposal can be obtained." The especial reference here made to cattle seems to point out clearly to the owner of the crops the method by which he may secure the best proof of those, from whom he must seek remuneration for the injury sustained; a method too, which, while it entails upon himself very little trouble, subjects the injurer to the annoyance of establishing his claim to the distrained cattle: and it is no injustice to the latter that he should be presumed to have abandoned his property in the half-starved herd which is turned out unwatched to wander at will in an unenclosed country. If there is any person in attendance on the cattle, the facility of proving his identity, and the consequent ownership of the cattle, must be held to supersede the necessity of any interference on the part of the police; and so where the cattle seized in trespass are rescued(a) in transit to the thana, or claimed at the time when they are being made over to the police-officers; for in all these cases the proof of the owners, or of those rescuing, will be taken *quantum valeat* by the civil court in establishing the parties answerable for the trespass. But when the cattle are delivered at the thana, or nearest police station, or placed in the charge of the

* *Distress B.* 4.

† *Distress D.* 1.

‡ *v. para.* 1189.

(a) The practice of the English law which allots higher damages in a case of rescue might be advantageously adopted by our civil courts.

village chokeedar, no one advancing a claim, they must be received and retained until the ownership is fairly established to the satisfaction of the magistrate: and in the meanwhile the darogah will in accordance with the above-quoted provision make over charge of them to the local zumeendar or head person of the village, reporting the occurrence to the magistrate. When the claim to the cattle is established, the owner will have to pay a fair remuneration for the feeding and tending of the cattle, as is the custom in all cases in which cattle are brought into the sudder station or retained at the thana; and the claimant for damages will be enabled to obtain from the foujdaree court the clearest proof of the re-delivery of the cattle to their owner. In practice too it has been found that the certainty of having to pay a few annas before obtaining the cattle is a very effectual check to cases of negligent and wilful trespass. This course of proceeding leaves the question of trespass entirely for the decision of the civil court, and allows the police officers the exercise of no authority, with which they have not been expressly invested by law.

CHAPTER V.

OF INDIGO CULTIVATION.

Punishment of persons wilfully allowing cattle to trespass on indigo crops.

3246. Persons wilfully damaging, or causing to be damaged, indigo plant, by allowing cattle to trespass thereon, or by any other means, are, on the complaint of the ryot to whom the crop belongs, or of the manufacturer by whom advances have been made for the cultivation and delivery of the said plant, liable, on proof of the offence, to such punishment, by fine and imprisonment, as the magistrate is competent to inflict under sect. 19, Reg. IX. 1807, due regard being had to the nature of the case and the circumstances in life of the offender. Reg. V. 1830, sect. 4.

Persons holding a summary award for the produce of a defined spot of land, may apply for the aid of the police to prevent the removal of the plant.

3247. Any person in whose favor a summary award has been passed [under this regulation] for indigo plant the produce of any defined spot of land, is entitled to place a watch over the same, and to prevent the cutting and removal of the plant in any manner contrary to the stipulations of his agreement; and in the event of any attempt being made to cut or remove the plant, it is competent to the person holding the decree to apply to the nearest police darogah, and to claim from him the assistance of the police in preventing such removal; it is moreover the duty of the police officers, and of all other officers, on such a decree being exhibited, to aid the person in whose favor it has been passed to the utmost of their power. Reg. VI. 1823, sect. 4, cl. 1.

A planter cannot demand the aid of the police to compel a ryot to fulfil his contract for the cultivation of indigo.

3248. In the case of a ryot entering into an engagement with an indigo planter for cultivation of a particular spot of ground, and afterwards wishing to evade the fulfilment of that engagement, the planter is not justified in cultivating the land by means of his own servants, nor has he a right to demand the assistance of the police for the purpose of compelling the ryot to fulfil his contract. His only legal remedy in such case is in the civil court. Const. No. 385.

How far the magistrate can interfere in cases of indigo disputes.

3249. The magistrate can interfere in cases of indigo disputes, only when they are cognizable under Act IV. 1840; and in such cases he may depute his assistant to make a local investigation under the provisions of Reg. XI. 1824.* In disputes regarding indigo which do not come within the provisions of Act IV. 1840, the enquiry must be made and final decision passed in the civil court; to which court the magistrate must refer the parties in all cases in which he cannot act himself. Const. Nos. 652 and 661.

* *v. parus.* 536 *et seq.*

The ryot who has cultivated the crop is in possession, and not the planter from whom he has received advances: and where the ryot has taken advances from two parties, they must all be referred to the civil court.

3250. Where A, a ryot, complains against C, an indigo planter, as likely to carry off indigo plant grown by him, and states himself to have received advances from, and to have grown the disputed plant for B, another indigo planter; and C declares that he also has made advances to A, and that A has cultivated the plant for him, which however A denies; in the trial of such a case under Act IV. 1840, A is to be considered in possession of the disputed crop, and is to be allowed to deliver the disputed plant to either B or C as he may think fit; and an order may be passed by the magistrate prohibiting C from attempting to take forcible possession. C will of course have his redress in the civil court, and if he timely take his measures there, supposing his claim to be in reality a better one than that of B, he might upon giving security, on a summary enquiry, be enabled to cut and carry away the disputed plant. Const. No. 1359.

BOOK VII.

OF OFFENCES WHICH MAY AFFECT THE PERSON OR PROPERTY.

CHAPTER I.

OF CONSPIRACY.(a)

In a case of conspiracy to defame, the person conspired against must appear as prosecutor.

3251. In an indictment for conspiring to defame by preferring a false charge of an heinous offence, the nizamut adawlut held it necessary that the person against whom the conspiracy was formed should appear as prosecutor; and as the magistrate had made the government prosecutor without taking the evidence of the aggrieved party, and without any complaint on oath, the trial was annulled; and option was allowed to the person conspired against to stand forward as prosecutor. N. A. R. vol. 3, page 171.

(a) By English law a conspiracy is an agreement between two or more persons—1. Falsely to charge another with a crime punishable by law, either from a malicious or vindictive motive or feeling towards the party or for the purpose of extorting money from him.—2. Wrongfully to injure or prejudice a third person, or any body of men, in any other manner.—3. To commit any offence punishable by law.—4. To do any act with intent to pervert the course of justice.—5. To effect a legal purpose with a corrupt intent, or by improper means.—6. Conspiracies or combinations by journeymen to raise their wages, &c.—Thus, *under the first head*, a conspiracy to charge a man falsely with treason, felony, misdemeanor, is indictable; but it is not an indictable offence for two or more persons to consult and agree to prosecute a person who is guilty, or against whom there are reasonable grounds of suspicion. *Under the second head*, a conspiracy to impose pretended wine upon a man, as and for true and good wine, in exchange for goods; a conspiracy by a female servant and a man whom she got to personate her master and marry her, in order to defraud her master's relations of a part of his property after his death; a conspiracy to injure a man in his trade or profession; a conspiracy to charge a man as the reputed father of a bastard; a conspiracy to raise the prices of the public funds by false rumours, as being a fraud upon the public; a conspiracy by persons to cause themselves to be reputed men of property, in order to defraud tradesmen; a conspiracy to defraud the public by issuing and negotiating bills in the name of a fictitious and pretended banking firm; a conspiracy by violence, threats, contrivance, or other sinister means, to procure the marriage of a pauper of one parish to a pauper of another, in order to charge one of the parishes with the maintenance of both; for these respectively it has been holden an indictment will lie. But an indictment will not lie for a conspiracy to kill game, or to commit any other mere civil trespass. If however the parties conspire to obtain money by false pretences of existing facts, it is no objection to the indictment for conspiracy, that the money was to be obtained through the medium of a contract. *Under the third head*, a conspiracy to commit a felony or misdemeanor is indictable. *Under the fourth head*, a conspiracy by certain justices of peace to certify that a highway was in repair, when they knew it to be otherwise, was holden to be indictable. So, where several persons conspired to procure others to rob one of them, in order, by convicting the robber, to obtain the reward then given by statute in such case, and the party who accordingly committed the robbery was afterwards convicted and actually executed, these persons were indicted for the conspiracy and convicted. The nature of the offence requires that more than one person should be concerned in its commission; one cannot be convicted of it, unless he has been indicted for conspiring with persons to the jurors unknown. And a man and his wife cannot be indicted for conspiring together alone, because they are in law one person. But one person alone may be tried

3252. On a trial for conspiracy, it was held that exciting discontent among the molungees employed in the salt department, by false statements to the prejudice of government, was a punishable offence: and the sentence by the circuit judge of one year's imprisonment was confirmed. N. A. R. vol. 3, page 232.

Conspiring to excite discontent among molungees by false statements, is punishable.

3253. Where four prisoners were convicted of conspiring together to murder a person of property, in order that the property might devolve upon the heir-at-law, himself one of the prisoners, and of having perpetrated a violent assault upon him in pursuance of the conspiracy, they were all sentenced to imprisonment with labor in irons for 14 years. N. A. R. vol. 3, page 88.

Case of conspiracy to effect murder.

3254. Two prisoners convicted of a conspiracy to charge the prosecutor falsely with having in his possession government treasure obtained by a robbery, were sentenced to stripes and imprisonment for 7 years. N. A. R. vol. 1, page 224.

Case of conspiracy to charge a man falsely with felony.

CHAPTER II.

OF PERJURY.(a)

Definitions and conditions.

What constitutes perjury.

3255. The crime of wilful perjury, subjecting the offender, on conviction, to the punishment stated in sect. 3 of this regulation, is hereby declared to be, giving intentionally and deliberately, before a court of judicature, magistrate, or other authorized public officer, a false deposition upon oath, or under a solemn declaration taken instead of an oath, relative to some judicial proceeding, civil or criminal, and upon a point material to the issue thereof. Reg. II. 1807, sect. 4, cl. 1.

for a conspiracy, provided the indictment charge him with conspiring with others who have not appeared, or who are since dead. An agreement by several to do a certain thing may be the subject of an indictment for conspiracy, though the same thing done separately by the several individuals, without any agreement between themselves, would not be illegal, as in the case of journeymen conspiring to raise their wages; for each may insist on his own wages being raised; but if several meet for the same purpose, it is illegal, and the parties may be indicted for a conspiracy. So, where several persons conspired to hiss at a theatre, Lord Mansfield held it indictable, though each might have hissed separately. If several persons concur in the act, it appears that they will be all guilty of a conspiracy, notwithstanding they were not previously acquainted with each other. The offence of conspiring consists in the unlawful agreement, although nothing be done in pursuance of it, for it is the conspiring which is the *gist* of the offence.—*Archbold and Roscoe.*

(a) Perjury at common law in England is defined to be a wilful false oath by one who, being lawfully required to depose the truth in any proceeding in a court of justice, swears absolutely in a matter of some consequence to the point in question, whether he be believed or not. The proceedings however are not confined to courts of justice. No oath taken before persons acting merely in a private capacity; or before those who take upon them to administer oaths of a public nature without legal authority; or before those who are authorised to administer some oaths, but not that which happens to be taken before them; or even before those who take upon them to administer justice by virtue of an authority seemingly colourable, but in truth void; can ever amount to perjury in the eye of the law, for they are of no manner of force. But any false oath is punishable as perjury which tends to mislead a court in any of its proceedings relating to a matter judicially before it, though it in no way affects the principal judgment which is to be given in the cause; as an oath made by a person offering him-

and subornation of perjury.

3256. Subornation of perjury punishable under the preceding section of this regulation, is declared to be the crime of procuring, or causing another person to commit the offence of perjury as above described. Reg. II. 1807, sect. 4, cl. 2.

self as bail. And not only such oaths as are taken on judicial proceedings, but also such as any way tend to abuse the administration of justice are properly perjuries, as an oath before a justice to compel another to find sureties of the peace. A man may be indicted for perjury in an oath taken by him in his own cause, as well as in an oath taken by him as a witness in the cause of another person. The object with which the oath was taken need not be carried into effect, for the perjury is complete at the moment when the oath is taken, whatever be the subsequent proceedings; as in the case of an affidavit on which no motion has been made. It was formerly thought that an oath did not amount to perjury unless sworn in absolute and direct terms, and that if a man swore according as he *thought, remembered,* or *believed* only, he could not be convicted of perjury: but the modern doctrine is otherwise: it is said by Lord Mansfield to be certainly true, that a man may be indicted for perjury in swearing that he *believes* a fact to be true, which he knows to be false. So perjury may be committed by swearing to a statement which in one sense is true, but which, in the sense intended to be impressed by the party swearing, is false; as where a witness swore that he left the party, whose health was in question, in such a way that, were he to go on as he then was, he would not live two hours; and it afterwards turned out that the man was very well, but had got a bottle of gin to his mouth; and true it was, in a sense of equivocation, that had he continued to pour the liquor down, he would in much less time than two hours have been a dead man. As regards perjury for a mere matter of opinion, Mr. Alison, in his principles of the criminal law of Scotland, says; "if the matter sworn to be one of opinion only, as a medical opinion, it cannot in the general case be made the foundation of a prosecution for perjury: but though a medical or scientific opinion cannot in general be challenged as perjury, because the uncertainty and division of opinion in the medical profession is proverbial, yet if it assert a fact, or draw an inference evidently false (as, for example, if a medical attendant swear that a person is unfit to travel who is in perfect health, or an architect declare a tenement to be ruined which is in good condition) certainly the gross falsehood of such an assertion shall in neither case be protected by the plea that it is related to a matter of professional investigation," A witness cannot be convicted of perjury, in answer to a question which he could not legally be called upon to answer, although it is material to the point in issue. The defendant, although perjury be assigned in his answer, deposition, or affidavit in writing, may prove that an explanation was afterwards given, qualifying or limiting the first answer. The materiality of the matter sworn to must depend upon the state of the cause, and the nature of the question in issue. If the oath is altogether foreign from the purpose, not tending to aggravate or extenuate the damages, nor likely to induce the jury to give a readier credit to the substantial part of the evidence, it cannot amount to perjury. As if upon a trial, in which the issue is whether such a one is *compos* or not, a witness introduces his evidence by giving an account of a journey which he took to see the party, and swears falsely in relation to some of the circumstances of the journey. Also it is said to have been resolved, that a witness who swore that one drew his dagger and beat and wounded J. S., when in truth he beat him with a staff, was not guilty of perjury, because the beating only was material. In such cases, it is said, it ought to be intended that the question was put in such a manner, that the witness might reasonably apprehend that the sole design of putting it was to be informed of the substantial part of it, which might induce him, though inadvertently, to take no notice of the circumstantial part, and give a general answer to the substantial; for otherwise, if it appear plainly that the scope of the question was to sift him as to his knowledge of the substance by examining him strictly as to the circumstances, and he give a particular and distinct account of all the circumstances, which afterwards appears to be false, he cannot but be guilty of perjury, inasmuch as nothing can be more apt to incline a jury to give credit to the substantial part of a man's evidence, than his appearing to have an exact and particular knowledge of all the circumstances relating to it. Upon these grounds the opinion of the judges seems to be very reasonable, who held a witness to be guilty of perjury who in an action for trespass by sheep deposed that he knew the sheep to be the defendant's, because they were marked with a mark which he knew to be the defendant's, whereas in truth the defendant never used such a mark; for the giving such a special reason for his remembrance could not but make his testimony the more credible than it would have been without it; and though it signified nothing to the merits of the cause, whether the sheep had any mark or not, yet inasmuch as the assigning such a circumstance in a thing immaterial had such a direct tendency to corroborate the evidence concerning what was most material, it was consequently equally prejudicial to the party, and equally criminal in its own nature, and equally tending to abuse the administration of justice as if the matter sworn had

3257. In addition to the rules contained in sections 26, 30, and 33, Reg. XII. 1817 [regarding putwarees, *para.* 3272], it is hereby declared, that any person convicted before a sessions court, or the nizamut adawlut, of having given intentionally and deliberately a false deposition upon oath, or under a solemn declaration taken instead of an oath, before a public officer authorized to take the same, is to be deemed guilty of wilful perjury, and liable to the punishment for that offence, declared in sect. 9 of this regulation, although the deposition so taken does not relate to any judicial proceeding, provided it clearly appears to have been given falsely and criminally on a point material to the case in which the deposition has been taken. Reg. XVII. 1817, sect. 13, cl. 1.

It may be perjury, though the false deposition does not relate to any judicial proceedings;

3258. Any person convicted before a sessions court, or the nizamut adawlut, of having procured or caused another to commit the offence described in the above clause, is to be deemed guilty of subornation of perjury: and is to be liable to the punishment of that offence, declared in sect. 9 of this regulation. Reg. XVII. 1817, sect. 13, cl. 2.

and the procuring such false deposition is subornation of perjury.

3259. The mere fact of a witness having wilfully given two statements directly at variance with each other, on a point material to the issue of the case in which he gives his testimony, must be held to be perjury; and the deponent on conviction is punishable accordingly. This dictum is in accordance with the Mahomedan law; and supersedes the precedent in N. A. R. vol. 1, page 282, which ruled that it is essential to a conviction of perjury in such case, that the truth of one of the two contradictory statements should be satisfactorily established. C. O. No. 126 of vol. 3.

It is perjury, if a witness wilfully gives two statements directly at variance with each other, on a point material to the issue.

3260. And a conviction of perjury may be had, without reference to the truth or falsehood of the deposition made; as in a case of false personation. N. A. R. vol. 4, page 260; and vol. 5, page 144.

So, it may be, though the truth of the case does not appear.

been the very point in issue.—Evidence is essential, not only to show that the witness swore falsely in fact, but also, as far as circumstances tend to such proof, to show that he did so corruptly, wilfully, and against his better knowledge. There must be proof that the false oath was taken with some degree of deliberation; for if, under all the circumstances of the case, it appears that it was owing to the weakness rather than the perverseness of the party, as where it is occasioned by surprise or inadvertence, or by a mistake with regard to the true state of the question, this would not amount to voluntary and corrupt perjury.—It is a general rule, that the testimony of a single witness is insufficient to convict on a charge of perjury, because there is in that case only one oath against another: but it seems that this means only, that the contradiction must be proved by not less than two direct witnesses; the taking of the oath and the facts deposed may be proved by one witness only. Also, if the perjury consists in the defendant's having sworn contrary to what he had before sworn upon the same subject, this is not within the rule above-mentioned; for the effect of the defendant's oath in the one case is neutralized by his oath in the other; and proof by one witness will, therefore, make the evidence against the defendant preponderate. But the contradiction of the one oath of the defendant by the other is not enough; for there is nothing to show which of the statements made by the defendant is the false one, where no evidence of the falsity is given. Upon this subject the following observations were made by Holroyd J.; "Although you may believe that on the one or other occasion the prisoner swore what was not true, it is not a necessary consequence that he committed perjury; for there are cases in which a person might very honestly and conscientiously swear to a particular fact from the best of his recollection and belief, and from other circumstances at a subsequent time be convinced that he was wrong, and swear to the reverse, without meaning to swear falsely either time." So, where the defendant was charged with perjury committed on a trial at the sessions, it was held that a deposition made by him before the magistrate entirely different from what he swore at the trial, was not in itself sufficient proof that the evidence he gave at the sessions was false, but that other confirmatory proof must be adduced to satisfy the jury that he swore falsely at the trial.—The party prejudiced is a competent witness to prove the offence.—*Archbold's Digest.*

Subornation may be committed by an absent person.

3261. A person producing in court a false witness through a vakeel, though himself absent, is guilty of subornation of perjury. N. A. R. vol. 5, page 67.

Difference between perjury and wilful prevarication.

3262. It is frequently difficult to discriminate between perjury and wilful prevarication in a witness; and as much must necessarily depend upon the particular circumstances of each case, the nizamut adawlut did not consider it possible to lay down any general rule on the subject. But if the prevarication, though wilful and designed, does not amount to perjury, it is not punishable as a contempt of court.* Const. No. 1177. C. O. No. 128 of vol. 3.

* *v. para.* 1054.

That part of the false deposition upon which the perjury is assigned, must be material to the matter then under consideration.

3263. The perjury must refer to a point material to the issue of the case. Thus, where the prisoner first denied on oath, and after five days confessed, that he had had a meeting and conversation with a darogah suspected of levying contributions in his village, but there was no evidence to show the nature of the conversation, it was held that the false swearing did not amount to perjury according to the intent of the definition given above; *N. A. R. vol.* 2, *page* 314. So, where the prisoners deposed falsely on oath, in a trial for robbery, as to their relationship to each other, the point was held immaterial to the issue of the trial, because their testimony would have been admissible, and might have been sufficient to produce the conviction of the prisoner tried, even had they deposed truly as to that point;(a) *N. A. R. vol.* 4, *page* 10. But it appears to be sufficient if the perjury bears only a collateral reference to the point at issue. Thus, where a witness for the defence, in a trial for theft, swore falsely as to the degree of relationship in which he stood to the prisoner, with a view of inducing the court to give readier credit to the substantial part of his evidence, he was convicted of perjury, and sentenced to imprisonment for one year; *N. A. R. vol.* 4, *page* 259. So, where a witness deposed falsely as to the evidence which he had given in a previous suit, in order, to conceal that his testimony had then been rejected, he was held guilty of perjury, and sentenced to imprisonment for 6 months; *N. A. R. vol.* 5, *page* 110.*

But it is sufficient if it is given with a view of inducing the court to give readier credit to the substantial part of the evidence.

* *See other cases mentioned in para.* 3308.

There must be a fraudulent or malicious intention.

3264. There must be a fraudulent or malicious intention. Thus, where the prisoners presented a petition to the magistrate for the recovery of a bullock unjustly detained by another person, and swore to their property in the bullock although in fact it belonged to a relation, to whom they restored it immediately on recovery, the absence of any fraudulent or malicious intention was considered sufficient to bar any punishment; *N. A. R. vol.* 1, *page* 222. But perjury is not extenuated by the circumstance of its being employed to benefit certain parties without detriment to any one. Thus, the nizamut adawlut refused to mitigate the minimum sentence of three years' imprisonment passed on certain persons, who swore falsely to the present existence of a woman, for the culpable homicide

But it is no excuse that the perjury will benefit certain parties without detriment to any one.

(a) In this case, Mr. Ross, one of the judges of the nizamut adawlut, observed; "Had there been proof adduced to establish that the false depositions, for which the prisoners were tried, were given before the magistrate or other officer legally authorized to examine them, I should have recorded my opinion for convicting them of 'giving a false deposition in a court of justice', and for sentencing them to two years' imprisonment with labor. A false deposition before a court of justice, although upon a point not material to the issue of the case under examination, is a high misdemeanor, and punishable by the Mahomedan law." But Mr. Leycester, another of the judges, did not concur in this doctrine: "it is perjury or nothing; and if not perjury under our regulations, we cannot make another species of perjury, and punish it as misdemeanor under the Mahomedan law. The regulation should be modified, and perjury defined as it now is in England."

of whom other prisoners had been previously convicted, with a view to obtain the release of the latter; *N. A. R. vol.* 6, *page* 12. So, where a prisoner personated another, and swore falsely that he was present at an affray, and it appeared that his sole motive for so doing was to oblige the person whom he personated, he was convicted of perjury and sentenced to three months' imprisonment; *N. A. R. vol.* 2, *page* 204.

Examples of cases, in which the false deposition did not amount to perjury.

3265. Where the prisoner denied on oath the execution of a vakalutnamah, which he was proved to have executed, it was held that the offence did not come within the legal definition of perjury. *N. A. R. vol.* 4, *page* 7.

3266. A private agent falsified his accounts to conceal the embezzlement of his employer's property, and swore to the truth of those accounts; it was held that he was not guilty of the legal crime of perjury. *N. A. R. vol.* 1, *page* 274.

3267. Where the prisoners swore to a signature as that of an individual, who it appeared had written only one letter of his name, and had then given the pen to his brother to complete the signature, as he was not able himself to write well, the court held, in concurrence with the futwa, that it was merely a lax statement, without sufficient explanation, and not a deliberate falsehood. *N. A. R. vol.* 3, *page* 217.

The oath must be administered in a place in which the administering officer is competent to hold his court.

3268. A deposition taken on oath in the private dwelling of a sudder ameen, distant nearly three miles from the court house, is illegal and cannot be received; consequently the deponent cannot be considered liable to the penalties of perjury if such deposition is false. Const. No. 627.

The oath must be taken before a competent court of jurisdiction.

3269. The oath or affirmation must be taken before a public officer authorized to administer the same. Thus, it was held that a prosecution for perjury could not legally be maintained against a person, who had sworn falsely in the investigation of a claim to a pension under Reg. XXIV. 1803, because there is no enactment which authorizes the collector to examine parties on oath in such cases; *Const. No.* 1106. So, where the oath was administered by a military court of enquiry, which has no power to examine upon oath; *N. A. R. vol.* 3, *page* 171. So, where the oath was administered by a police mohurrir in the presence of the darogah, as the mohurrir under Reg. XX. 1817 has no power to administer oaths except in the absence of the darogah, and the latter has no authority to delegate his power of administering oaths when present; *N. A. R. vol.* 1, *page* 386. So, where the oath was administered by a mohurrir of a civil court not duly authorized by the judge to take the examination of the witness; *N. A. R. vol.* 3, *page* 212: and it is not sufficient that the power to take the examination was delegated to such officer after the deposition had been committed to writing; *N. A. R. vol.* 1, *page* 326. The authority for exercising the power so delegated must be proved on the trial to make the proceedings complete; *N. A. R. vol.* 3, *page* 157. But a false deposition will amount to perjury, if the ministerial officer is duly authorized to take the deposition, for in such case the power to administer the oath is implied; *N. A. R. vol.* 2, *page* 202.

a deposition taken in the presence of the magistrate is not complete until attested.

3270. The majority of the nizamut adawlut held that a false deposition on oath taken by a native ministerial officer in the presence of the magistrate (in the manner prescribed in C. O. No. 58 of vol. 1*) relative to some judicial proceeding, and upon a point material to the issue thereof is perjury; *Const. No.* 656. But if the false statement is retracted by

* *v. para.* 371.

the witness, before the deposition has been attested by the magistrate, it does not amount to perjury; *N. A. R. vol.* 2, *page* 154; *vol.* 5, *page* 70.

Punishment has been remitted when the oath ought not to have been administered.

3271. Punishment has been remitted where the oath ought not to have been administered. Thus, where a person was examined on oath with respect to criminal acts, in which he was implicated as a party, and when therefore he was reduced to the alternative of giving false evidence or of criminating himself, he was discharged without punishment; *N. A. R. vol.* 1, *pages* 138 *and* 349. And where the confession of a person to having given a false statement in a former deposition on oath, was taken on oath, he was released on his trial for perjury; *N. A. R. vol.* 2, *page* 180. Where the magistrate in the investigation of a charge of assault caused some of the bystanders to be mixed with the defendants, and then desired the witnesses for the plaintiff to point out the persons concerned in the assault, and they accordingly pointed out several persons wholly unconcerned in the case, and were on that committed for perjury; the nizamut adawlut would not give their sanction to the artifice by which the witnesses were entrapped into the offence, and directed their discharge without punishment. *N. A. R. vol.* 2, *page* 321.

and where the offender was entrapped into the commission of the offence.

How far officers employed in the revenue department have the power of administering oaths.

3272. Wherever it has been the intention of the legislature, that officers employed in the revenue department shall have power to examine parties on oath, or solemn declaration, in cases pending before them either judicially or otherwise; and that the legal penalties for perjury should be applicable to such parties in the event of their giving deliberately and intentionally a false deposition on oath, or under a solemn declaration taken instead of an oath; and the penalties for subornation of perjury applicable to persons causing or procuring such persons to commit perjury; an express provision to that effect has been inserted in the regulations; *Const. No.* 1106. Thus it is so enacted, in the case of a putwaree examined before a collector, or the officer of a collector duly empowered to take his examination, relative to the lands, produce, collections, and charges, of the village or villages to which he belongs; and in the case of any native agent, employed by a proprietor or farmer of land in the management of his estate or farm, or in keeping the accounts relating to it, when so examined; and in the case of a proprietor or farmer of land, or his gomashtah or other officer, where no putwaree is appointed, when so examined: *Reg. XII.* 1817, *sects.* 26, 30, *and* 33: *and Reg. I.* 1801, *sect.* 8. So, in the case of witnesses examined by a collector, or other officer exercising the powers of a collector, in resumption cases: *Reg. II.* 1819, *sect.* 19: or in settlement cases: *Reg. VII.* 1822, *sect.* 19, *cl.* 2. So, in regard to stamps, in the case of witnesses examined by the board or other controlling authority, or by the collectors of land revenue or other officers vested with the local charge of this branch of revenue: *Reg. X.* 1829, *sect.* 19. So, in the case of witnesses examined by the collector or other officer in charge of the abkaree mahal: *Reg. XIII.* 1816, *sects.* 86 *and* 88; *and Reg. VII.* 1824, *sect.* 16, *cl.* 4. So, in the case of witnesses examined by a salt agent or superintending officer of chokees: *Reg. X.* 1819, *sects.* 103 *and* 106; *and Act XXIX.* 1838, *sect.* 26. So, in the case of witnesses examined by a collector of the land revenue or customs, or by an agent for the provision of salt or opium, respecting the conduct of any native officer employed under them respectively: *Reg. VIII.* 1809, *sect.* 10, *cl.* 5. So, in the case of witnesses examined before arbitrators appointed to ascertain and determine the value of property required for public purposes: *Reg. I.* 1824, *sect.* 4, *cl.* 8. So,

in the case of persons who, in making any declaration under the authority of this Act (regarding the importation of rum and rum shrub), knowingly affirm an untruth. *Act VI.* 1841, *sect.* 9.

The wilful concealment of bond debts by an insolvent debtor is perjury.

3273. The wilful concealment of bond debts due to an insolvent debtor examined on oath before the civil court under the rules contained in sect. 11, Reg. II. 1806, is punishable on conviction as wilful perjury under cl. 1, sect. 13, Reg. XVII. 1817. Const. No. 1086.

Precautions to be adopted in taking evidence to ensure conviction of perjury.

3274. If witnesses were examined in the courts of the magistrates, as they should be, by the magistrates themselves, and closely questioned as to every apparent inconsistency in their deposition, care being taken at the same time to make them understand the questions asked, and to write down the answers given by them so as to convey exactly their intended meaning, the crime would not be so often committed with impunity as it is. To warrant a sentence of punishment, it is only required, under cl. 1, sect. 3, Reg. II. 1807, that the proof adduced be sufficient to satisfy the judge that the crime, defined to be perjury, has really been wilfully committed by the accused prisoner.(a) Const. No. 638.

Nature of proof required.

Commitment.

If in civil court, to be made by judge.

3275. If a witness, or any person, is guilty of wilful and corrupt perjury in any cause or matter in a civil court, the judge is immediately to commit the offender to take his trial before the sessions court. *Beng.* Reg. IV. 1793, sect. 14. *Ced. Prov.* Reg. III. 1803, sect. 8.

Magistrate not to entertain charge of perjury against persons engaged in a civil suit.

* *Or forgery, see para.* 3284.

3276. Magistrates are not to receive any charges of perjury,* which are preferred by parties in civil suits, either against their own witnesses, or against the witnesses of the adverse party, or of subornation of perjury against the adverse parties in such suits; and all individuals whose attendance is required in the civil courts, either as plaintiffs, defendants, or witnesses, are hereby declared not to be liable to any prosecutions of this description, unless they are committed to take their trial by the civil judge under the authority vested in him by the above provision.(b) *Beng. and Ben.* Reg. III. 1801, sect. 2. *Ced. Prov.* Reg. VII. 1813, sect. 3. Reg. XVII. 1817, sect. 14, cl. 1.

(a) Under the Mahomedan law, perjury may be proved either by confession, or by circumstantial evidence such as affords in the opinion of the judge direct or strongly presumptive proof: thus, two contradictory statements of a fact are a direct proof of perjury, where the first is affirmatory, and the second a negative; as where a person deposes that he saw A kill B, and afterwards deposes that he did not witness the transaction: but if he first deposes that he did not see the occurrence, and afterwards states in evidence that he was an eye-witness to it, the infirmity of the memory is admitted as an excuse to bar the punishment. It seems also that a person, who confesses that he deposed falsely in the first instance from fear, is not liable to punishment if he afterwards tells the truth. Where the difference between the two statements is not very material, the witness is not liable to punishment; but it is sufficient if his statement appears to the judge manifestly impossible. See the futwa given by the law officers of the nizamut adawlut, quoted in Const. No. 656; it contains several other particulars and conditions regarding the liability of witnesses to a sentence of tazeer for perjury, and the circumstances which absolve them from punishment; but it seems unnecessary to recount them here.

(b) The reasons of this enactment are thus stated in the preamble to Reg. III. 1801:—"But a practice has become very prevalent in different parts of the Company's provinces, for the parties in civil suits to prefer unfounded charges of perjury against the witnesses of their opponents, and against their own witnesses where their evidence does not establish every point which they may have been brought to prove, and similar charges of subornation of perjury against the adverse parties in such suits. These accusations are frequently supported by gross perjury on the part of the witnesses produced in support of them; and, unless checked, they will deter all

This rule is applicable to all allegations of perjury against parties or witnesses in any civil suit or any civil proceeding before a judge or a subordinate civil court.

3277. The above rule (with this qualification that the civil judge may commit to prison, or admit to bail, as he thinks proper, under the discretion given by sect. 5, Reg. II. 1807) is to be considered applicable to all allegations of perjury, or subornation of perjury, against parties or witnesses in any civil suits, or any civil proceedings whatever before the judge of a civil court, or before a sudder ameen [or principal sudder ameen] or moonsiff, or an arbitrator or arbitrators appointed to investigate such suits, or an officer employed by a civil court in any local or other enquiry, or in the execution of any civil process. In all such cases the proceedings, on which the charge of perjury, or subornation of perjury, is grounded, if not held before the civil judge in the first instance, are to be referred to him by the moonsiff or other officer, before whom the proceedings have been held, with the sentiments of such officer upon the case; and if the judge is of opinion that there are sufficient grounds for bringing the accused party to trial before the sessions court on a charge of perjury, or subornation of perjury, he is to record his opinion to that effect; and at the same time to direct whether the accused is to be admitted to bail or kept in custody. An authenticated copy of the order passed by him, with the whole of the original papers relative to the case, are then to be transferred to the cutchery of the magistrate, that the order of the judge may be carried into effect, and the case brought before the sessions court, in the same manner as if the charge had been instituted and proceeded upon in the court of the magistrate. Reg. XVII. 1817, sect. 14, cl. 2.

Mode of procedure in such cases.

This includes miscellaneous cases;

3278. The words "any civil proceedings whatever" in the above provision include miscellaneous cases. Const. No. 838.

and perjury before a register of deeds.

3279. The registry of deeds is a "civil proceeding," contemplated by the above provision; and, in cases of perjury before the register of deeds, the judge and register should proceed in conformity thereto. Const. No. 611.

This does not refer to giving money to influence evidence.

3280. A civil judge is not authorized, under the above provision, to commit a person for trial on the charge of giving money to witnesses in a civil suit for the purpose of influencing their evidence. Const. No. 504.

Duty of the magistrate in such cases.

The civil judge can not as session judge try such cases.

3281. In cases of perjury in the civil courts (whether before the judge or a subordinate court) the commitment should, according to the above provision, be made by the judge; who is at the same time to determine whether the persons charged are to be admitted to bail or kept in custody; the duty of the magistrate being confined to causing the attendance of the parties and witnesses before the court by whom the case is to be tried. When the civil judge has made a commitment, he cannot as session judge, try it himself.* C. O. No. 169 of vol. 2.

* *v. paras.* 749 *and* 752.

men of respectability from appearing to give their testimony on oath in any court of justice, except on compulsion, and will greatly increase the difficulties, which already exist, in obtaining the voluntary attendance of witnesses of this description, while exposed as at present to the disgrace of a commitment to jail, and of a public trial on a criminal charge. The only effectual remedy, which can be applied to this abuse, is to take away altogether from parties in civil suits the right of bringing forward such accusations, and to leave it in the discretion of the judge to determine when any witnesses brought before him are guilty of perjury, which he may always be able to do by cross-questioning them minutely, and by confronting them, when necessary, with the witnesses of the adverse party.'

The commitment must be made at the instance of the court in which the perjury was committed.

3282. Where a prisoner, in a criminal case referred by the magistrate to the moulvee for investigation, admitted that he had perjured himself in the civil court, and was then sent back to the magistrate, who committed him to the sessions for the perjury; it was held that the proceeding was irregular, and that the commitment should have been made at the instance of the court in which the perjury was committed. The proceedings of the court of circuit were annulled, and the prisoner was held to bail to answer the charge of perjury, if again preferred against him in consequence of any report which the register (the officer in whose court the perjury was alleged to have been committed) might make to the judge in conformity with the above provisions. N. A. R. vol. 2, page 208.

Proceedings originating otherwise have been annulled.

3283. In a similar case of forgery in the court of a moonsiff, the commitment made by the magistrate was annulled, as it belonged to the civil judge to make the requisite enquiry on a representation from the moonsiff, and to commit the persons implicated in the transaction, if sufficient ground appeared for such a measure. Const. No. 704.

3284. So, in a case of forgery and perjury, alleged to have been committed before a collector in a summary suit, where the magistrate committed the prisoners, and the circuit judge convicted them, on the complaint of the losing party, the whole of the proceedings were declared null and void, and the prisoners were released. The provisions of Reg. III. 1801, are applicable to charges of forgery as well as perjury. N. A. R. vol. 3, page 203.

3285. In a case of perjury, where the commitment was made by the magistrate in the same irregular manner, the proceedings having been made over to him by the civil judge who ought himself to have committed the case, the proceedings were annulled; but as the prisoners had already been in confinement for eighteen months, and under all the circumstances of the case, the court did not consider it necessary that further proceedings should be held against them, and directed that they should be immediately released. N. A. R. vol. 3, page 290.

The above rules are equally applicable in cases of forgery.

3286. In cases of forgery brought to light in the course of judicial proceedings, it is not optional with the civil courts either to commit the accused for trial before a special sessions, or to direct a prosecution for forgery, or to declare the party aggrieved by such forgery at liberty to institute a prosecution in the criminal court, as to them may seem fitting; but it is incumbent on those courts in all such cases to conform strictly to the rules prescribed for adoption in cases of perjury by the above provisions. These instructions are not meant to exclude from the cognizance of the magisterial authorities criminal prosecutions for forgery, which are instituted irrespectively of proceedings in any civil court.(a) C O. No. 225 of vol. 3.

Rule in regard to a case pending before the civil judge in appeal, or decided by him on appeal.

3287. In a case of forgery arising out of a civil suit tried by a subordinate court, if the suit is pending before the judge in appeal, he is competent to commit the party, whom he deems guilty of having forged it (or filed it knowing it to have been forged), to be tried by the sessions court; but if the appeal has been decided, the alleged forgery can only be brought under the judge's cognizance by his obtaining the sanction of the sudder dewanny adawlut to review his judgment. If the subordinate court, who tried the suit in the first

(a) This circular order rescinds Constructions Nos. 454, 820, and 1221, and Circular Order No. 14 of vol. 2.

instance, thought that the document in question was a forgery, and that the party who filed it knew it to be so, he should have sent the case to the judge, who would have been competent to proceed against the person or persons whom he might have deemed guilty, in like manner as if the suit had been instituted and pending before himself. Const. No. 572.

How the civil judge is to proceed if the person charged with forgery absconds.

* *v. paras.* 1234 *et seq.*

3288. The provisions of sect. 4, Reg. III. 1804 (*Beng.* sect. 4, Reg. XL 1796)* are capable of enforcement by the civil judges against any party who absconds being at the time under a charge of forgery, brought to light in the course of civil judicial proceedings. It is the duty of the civil judge in such cases, to call upon the magistrate of the district to perform the acts described in that section, and in the corresponding section of Reg. XX. 1817, with a view to the apprehension of the absconding party; and it is incumbent on the magistrate to obey such requisitions, and to proceed as he would do, were the absconding party in question charged with a criminal offence primarily cognizable in his court.

Rule regarding the attachment of property in such cases.

The principle set forth in the third paragraph of Const. No. 648 [viz. that the plea that the collector's office does not furnish sufficient information, or that no division can be made of the attached talooks, is not sufficient to warrant the collector in declining to bring the same to sale, because he is bound to obtain the required information and to make the requisite division or to satisfy the court that it cannot be done] is applicable to attachments of property directed to be made under the sanction of the law above cited and these instructions. C. O. No. 19, May 17, 1847.

In cases committed by the civil judge, he is to draw up and sign the charge.

* *v. para.* 661.

3289. The separate paper, containing the charges in the English and vernacular, prescribed by para. 16 of C. O. No. 54 of vol. 2,* is to be drawn up and signed by the judge, who makes a commitment for perjury or forgery brought to light in the course of any civil proceeding. C. O. No. 9, March 12, 1847.

Rule for the admitting to bail persons charged with perjury, subornation of perjury, or forgery.

3290. Persons charged with the crime of perjury, subornation of perjury, or forgery, as defined in the preceding section, and appearing to the civil or criminal courts, by whom they are ordered to be brought to trial before the sessions courts, to have been guilty of the charge, are not to be admitted to bail (notwithstanding anything declared to the contrary in any existing regulation) unless specially authorized by the court under whose directions they are committed for trial. But nothing herein contained is to be construed to preclude the magistrate from admitting to bail persons committed by him for trial, on charges preferred originally before him, in cases cognizable by him under the regulations, without any order from a civil or criminal court for the commitment of such persons for trial before the sessions court. Reg. II. 1807, sect. 5.

Sudder dewanny adawlut how to proceed, if there appear sufficient grounds to bring any person to trial on such charge.

3291. If the judges of the court of sudder dewanny adawlut, or any single judge of that court in cases within the competency of a single judge, are of opinion that there are sufficient grounds, on any civil proceeding before them, for bringing a party or witness to trial on a charge of perjury or subornation of perjury, they are to record their sentiments to that effect; and at the same time to direct whether the party accused shall be admitted to bail, or kept in custody:—an authenticated copy of the order so passed, with the whole of the original papers relative to the case, are then to be transmitted to the proper magistrate, for the purpose of being proceeded upon as stated in the preceding clause [*para.* 3277]. Reg. XVII. 1817, sect. 14, cl. 3.

3292. Whenever a witness giving evidence before a sessions court is considered by the judge of that court to be guilty of wilful perjury, or whenever a person attending a sessions court is considered by the judge of that court to be guilty of subornation of perjury, or of forgery, in any trial or matter depending before the court, and the whole of the witnesses required for the proof of the charge and for the defence of the accused are also in attendance, it is competent to the session judge to direct the magistrate to commit the person so charged for immediate trial before the sessions court. Provided that nothing in this section is to be construed to authorize the conviction or punishment of any person, charged with the crimes specified, until he has been regularly put upon his trial; or until any material evidence which he has to offer in his defence has been received and duly considered. Reg. II. 1807, sect. 6.

Session judge how to proceed if any witness or party attending the court is guilty of such offence.

3293. The restrictions against prosecutions for perjury and subornation of perjury of witnesses and parties in the civil courts, unless the officers presiding in those courts are of opinion that there are grounds for such prosecutions, are extended to all charges of perjury, or subornation of perjury, against witnesses and prosecutors in the criminal courts, or before any public officer authorized to hold inquiries respecting offences of a criminal nature. Provision is already made in sect. 6, Reg. II. 1807 for such cases, when persons attending the sessions court appear to the judge of that court to be guilty of perjury or subornation of perjury. The session judges, and the judges of the nizamut adawlut, or a single judge of that court in cases within the competency of a single judge, are empowered to direct the proper magistrate to commit to custody, or hold to bail, and to bring to trial at the sessions, any person who from proceedings before the above courts, appears to have been guilty of the crime of perjury, or subornation of perjury; and the magistrates themselves are vested by the regulations with full authority to commit, or hold to bail, for trial before the sessions court all persons who on their own proceedings, or those of their assistants, are considered guilty of either of the crimes above mentioned. The magistrates are therefore prohibited from receiving and acting upon any charges of perjury or subornation of perjury, alleged to have been committed in the course of any trial, or enquiry of a criminal nature, excepting such as come before them in the manner provided for by this section. Reg. XVII. 1817, sect. 14, cl. 4.

Magistrate is not to receive or act upon any charge of such offence alleged to have been committed in any criminal court, unless the officer presiding in such court considers that there are grounds for the prosecution.

3294. In perjuries before a session judge, he is at liberty, under the above provisions, to direct the magistrate to commit the offenders for trial, and immediately to proceed to the trial of the case himself. C. O. No. 169 of vol. 2.

Session judge may try a case which he has directed the magistrate to commit.

3295. In all cases of forgery brought to light in the course of criminal judicial proceedings, it is incumbent on the session judge to conform to the rules prescribed above; and it is not optional with him to declare the party aggrieved by such forgery at liberty to institute a prosecution in the criminal court. C. O. No. 225 of vol. 3.

The above rules are applicable to cases of forgery in the criminal courts.

3296. The magistrates are further restricted from receiving and acting upon charges of perjury, or subornation of perjury, alleged to have been committed before a collector or other public officer, unless such officer transmits the proceedings held before him with his opinion, that there are grounds for believing such charge to be well founded. In that case, and if the magistrate on inspection of the proceedings, or after making such further enquiry as he deems necessary, is of opinion that there are grounds for bringing the party

So, in cases before a collector or other public officer.

accused to trial before the sessions court, he is to pass an order to that effect; and is at the same time to direct whether the accused shall be held to bail or kept in custody till the sessions. Reg. XVII. 1817, sect. 14, cl. 5.

If there is no private prosecutor, the magistrate is to appoint a person to prosecute.

3297. In all the cases provided for by this section, if there is no private prosecutor to whom the magistrate judges it proper to leave the prosecution of the case before the sessions court, he is to appoint the vakeel of government, or some other qualified person, to conduct the prosecution before the sessions court, and is to furnish him with the requisite information and instructions for that purpose. Reg. XVII. 1817, sect. 14, cl. 6.

Forms of indictments.

3298. The following forms of indictments are to be used in cases of perjury, mutatis mutandis:—"Perjury, in having, on the 1st May 1847, deposed under a solemn declaration, taken instead of an oath, before the magistrate of zillah Moorshedabad, that [*here enter the false statement in which the perjury consists*], such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case."—In cases of statements directly at variance with each other, the following form is to be used:—"Perjury, in having on the 1st January 1847, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the civil judge of zillah Moorshedabad, that [*here enter the first statement*]; and in having on the 13th February 1847 again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the said civil judge of zillah Moorshedabad [*or any other court*] that [*here insert the second statement*]; such statements being contradictory of each other on a point material to the issue of the case." C. O. No. 10, July 23, 1847.

Trial.

Confession alone is not sufficient; proof required of the falsity of the matter sworn.

3299. It is not regular to convict of perjury on mere confession of having been instigated to swear falsely, when the truth or falsehood of the facts sworn to be doubtful: but the confession of the prisoner that he swore falsely is sufficient evidence for conviction of perjury, provided circumstances indicate the falsehood of the deposition charged to be false. N. A. R. vol. 1, page 314; and vol. 2, page 168.

Proof required of the taking of the oath; of the authority to administer the oath; and of the occasion. The time, place, and court, must be noted in the charge.

3300. The recital in the roobakaree of commitment that the false deposition was taken on oath, is not a sufficient proof of the fact: but where it was certified by the magistrate that the false statement was made on oath, and the prisoner did not dispute that he was sworn, the nizamut adawlut did not deem the omission to bring witnesses to that fact to be material. Where, in a case of alleged false personation by a witness before an uncovenanted deputy collector under Reg. VII. 1799, the time, place, and court, in which the evidence was given, were not stated in the charge; and the deposition taken before the deputy collector was not placed on the record of the trial; and the authority under which the deputy collector took the deposition was not recorded: the trial was quashed, and the proceedings were returned that these omissions might be supplied, and the trial held *de novo* in a regular manner. N. A. R. vol. 2, page 64; vol. 3, page 22; and vol. 5, page 166.

Case of fatal variance in description of the witness.

3301. Where the prisoner denied on oath that he had previously given evidence, and was accordingly committed for perjury; and it appeared that in the original deposition the witness was described as about thirty years of age, and that the prisoner appeared on trial to be upwards of fifty; the nizamut adawlut held that this discrepancy was sufficient ground for doubting his identity, and accordingly acquitted him. N. A. R. vol. 3, page 347.

3302. A false deposition on oath, or under a solemn declaration taken instead of an oath, containing a deliberate and specific criminal charge, which the deponent knows to be unfounded, and which also appears to be malicious, is within the provisions for perjury, notwithstanding the rules for the punishment of malicious, vexatious, and unfounded complaints in sect. 5, Reg. VII. 1811. Const. No. 233.

Charge of perjury in false complaint on oath may be entertained notwithstanding the provisions for false complaints.

Penalties.

3303. If any person amenable to the jurisdiction of a sessions court is convicted before that court whether by his free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence, of wilful perjury, or subornation of perjury, or of forgery,[a] or procuring forgery, as defined in Reg. II. 1807, or Reg. XVII. 1817; and is, in consequence, by the futwa of the Mahomedan law officer of the sessions court, declared liable to discretionary punishment (tazeer, acoobut, or seasut); the session judge, provided he concurs with the law officer in the conviction of the prisoner, is to sentence him to be publicly exposed in the mode commonly denominated tusheer, to receive thirty stripes [now commutable to two years' additional imprisonment], and to be imprisoned in banishment from the district for the period of seven years, unless the judge, on consideration of all the circumstances of the case, is of opinion that any part of the prescribed punishment is too severe; in which case he is authorized to mitigate the sentence to imprisonment, with or without tusheer, for any period not less than three years. Reg. II. 1807, sect. 3, cl. 1. Reg. XVII. 1817, sect. 9, cls. 1 and 2.

What sentence may be awarded in cases of perjury, subornation of perjury, forgery, or procuring forgery.

3304. If in any instance the session judge is of opinion, that a further mitigation or remission of punishment is necessary, he is, provided he concurs in the conviction of the prisoner, to pass sentence according to the preceding clause, and to refer the trial, with his sentiments at large, for the final sentence or order of the nizamut adawlut. Reg. XVII. 1817, sect. 9, cl. 3.

Session judge may refer the trial for mitigation of such sentence.

3305. If the session judge differs in opinion from the law officer of his court, with respect to the conviction of the prisoner, he is not to pass any sentence, but is to transmit his own and the magistrate's proceedings, with his sentiments in a letter to accompany them, for the sentence of the nizamut adawlut. Reg. II. 1807, sect. 3, cl. 2.

Trial to be referred, if session judge differs from his law officer.

3306. In cases of reference to the nizamut adawlut, this court, after taking the futwa of its law officers,* is, if the prisoner be convicted, to sentence him to any punishment deemed proper, not exceeding that specified above. Reg. II. 1807, sect. 3, cl. 3.

Sentence to be passed by the nizamut adawlut.

* *But see para.* 990.

Precedents.

3307. A prisoner convicted of perjury in falsely swearing to a charge of murder against several persons, having also previously given a different account of the transaction on oath, was sentenced to tusheer and to imprisonment in banishment for 7 years. *N. A. R. vol.* 3, *page* 50. A woman caught in the act of adultery by two persons, accused them falsely of theft, and was sentenced to one year's imprisonment from the date on which her trial was completed by the sessions court. *N. A. R. vol.* 3, *page* 22. Where the prisoner was brought to the magistrate's court with a hand and a foot cut off, and falsely accused certain parties of having perpetrated the mutilation and of having murdered his brother, but it appeared that he was actuated by a desire to secure attention

Cases of false accusations made on oath.

(a) For sentence to be passed on persons convicted of forgery of counterfeit coin, public stamps, securities, or bank notes, *see paras.* 2477 *et seq.*

and care in his wounded state and a provision for himself in his helpless condition, and he confessed the crime, he was sentenced to 6 months' imprisonment in addition to the 6 months' confinement, which he had already undergone. *N. A. R. vol.* 2, *page* 168. Where the prisoners deposed to a false charge of robbery, but on the trial of the person whom they had accused voluntarily retracted their assertions, and there was strong suspicion that undue influence had been exerted to make them depose falsely, the nizamut adawlut, in consideration of the confinement which they already suffered, ordered their release.(a) *N. A. R. vol.* 1, *page* 288.

Cases of perjury in order to defeat the ends of justice.

3308. Where the prisoner denied in the sessions court all knowledge of a confession which he had attested before the magistrate, he was sentenced to imprisonment for 5 years with labor in irons. *N. A. R. vol.* 5, *page* 102. So, where the prisoner first denied, but afterwards confessed, that he had been present at and attested a confession made at the thana, the nizamut adawlut set aside the justificatory plea of perplexity of mind, and sentenced him to 3 years' imprisonment with labor. *N. A. R. vol.* 3, *page* 238. Where the prisoners swore before the magistrate that they had witnessed fighting in an affray though without being able to distinguish the dealers and receivers of blows, and afterwards denied before the sessions court that they had seen fighting at all, they were acquitted by the futwa on the ground of perplexity of mind, but convicted by the court and sentenced to two years' imprisonment. *N. A. R. vol* 3, *page* 255. A chokeedar deposed before the magistrate in a case of dacoity under investigation that no dacoity had taken place; and seven days after on being re-examined admitted his first deposition to have been false, declaring that on visiting the premises after the robbery he had observed the signs of a dacoity having been perpetrated; he was sentenced for the perjury to imprisonment for one year with labor. *N. A. R. vol.* 6, *page* 47. In the investigation of an affray attended with murder in the Allipore jail, a duffadar of the jail-guard deposed before the magistrate that on hearing the noise he had quitted the place where he was on guard, and had run to the spot where the prisoners were fighting; before the commissioner he deposed that he did not quit the spot where he was on guard and that he knew nothing of the disturbance except from hearsay; he was convicted of perjury, but discharged with reference to the imprisonment he had already undergone. *N. A. R. vol.* 4, *page* 101. In a case of assault one of the witnesses first deposed to the truth of the complaint, and was afterwards compelled by intimidation to give his evidence on behalf of the defendant in direct opposition to that which he had previously given; he was sentenced for the perjury to imprisonment for 3 months; and the defendant who had brought him forward in the second instance was convicted of subornation of perjury, and sentenced to imprisonment for 3 years with labor in irons. *N. A. R. vol.* 5, *page* 109. Where a witness in order to induce the magistrate to place more confidence on his evidence swore that a certain woman was his cousin, whereas in truth she was his sister, he was sentenced for the perjury to imprisonment for one year. *N. A. R. vol.* 5, *page* 175. So, where a witness, in order to gain greater credit, swore falsely as to the evidence which he had

(a) Under the Mahomedan law, if the false charge is retracted before the person accused has suffered any injury from the accusation, the false accuser is not subjected to the penalty for perjury, but is liable to discretionary punishment.

given in a former suit, he was sentenced to 6 months' imprisonment. *N. A. R. vol.* 5, *page* 110. So, where a witness for the defence in a case of theft falsely denied on oath that the prisoner was his brother, declaring that he was his cousin, with a view to obtain credit to his statement of the honest acquisition of certain property by the prisoner, the nizamut adawlut considered a sentence of one year's imprisonment sufficient. *N. A. R. vol.* 4, *page* 259. And so, where a father, aged 70, denied that the prisoner, who had called him to prove an alibi, was his son, with the same intent, he was sentenced to imprisonment without labor and irons for 3 months. *N. A. R. vol.* 2, *page* 313. On the trial of a darogah for the corrupt receipt of a horse, a burkundaz of the thana swore that the prisoner had not received the horse as alleged by the prosecutor, but had purchased it from a peasant; this statement he afterwards acknowledged to be false, declaring that he was instigated to swear falsely by the darogah, who had threatened him with vengeance if he disclosed the truth; he was sentenced, under the impression that he had been actuated in the first instance by dread of his official superior, to be imprisoned with labor for one year and a half. *N. A. R. vol.* 3, *page* 70. Where a person called upon to prove on oath his sufficiency as security for another deposed that his property was free from incumbrance, and eight days after came forward and acknowledged that his property was at the time of his former deposition mortgaged to its full extent, he was sentenced to imprisonment for one year. *N. A. R. vol.* 1, *page* 159.

Cases of perjury by false personation.

3309. Where the prisoner charged several persons with carrying him away and confining him, and it appeared that his brother was the party injured, and that he had come forward merely on account of the indisposition of his brother, he was sentenced to imprisonment for 3 years. *N. A. R. vol.* 4, *page* 99. A prisoner convicted of having wilfully perjured himself by giving his deposition under a feigned name, was sentenced to imprisonment for 3 years; and his brother-in-law, who deposed to his identity with the individual whom he personated, was sentenced to imprisonment for 2 years, both with labor in irons. *N. A. R. vol.* 5, *page* 58. Where the prisoner gave evidence under different names in two civil suits, between the same parties, denying on the last occasion his identity with the witness who had given evidence in the first case, he was sentenced for perjury to imprisonment for one year. *N. A. R. vol.* 5, *page* 144. So, where the brother of a person summoned as a witness came forward, and gave evidence on oath in the name of his brother, he was sentenced to one year's imprisonment. *N. A. R. vol.* 4, *page* 260. And so, where the prisoner personated another, and swore falsely that he was present at an affray, and it appeared that his sole object was to oblige the individual whom he personated, he was sentenced to 3 months' imprisonment. *N. A. R. vol.* 2, *page* 204. Where a person came forward to attest the signature to a power of attorney in the room of one who had witnessed it and under his name, but the false personation was discovered before he had given his deposition,(a) he was sentenced to imprisonment for 6 months; and the person who had brought him forward was sentenced, for subornation of the perjury, to imprisonment for one year. *N. A. R. vol.* 4, *page* 97. So, where in

(a) The report does not show very clearly, but it is to be presumed, that the perjury was completed by the giving on oath a false name; for it is expressly mentioned that the questions *were about to be put* to the witness, when the false personation was pointed out by a bystander.

attesting a deed of acquittance before a register of deeds the witnesses present forgot the names of the contracting parties, and the attorney declaring that he had another witness in attendance took one of those witnesses out of court and altered his dress, and re-produced him in that disguise under the name of another of the subscribing witnesses, and the witness after having given his deposition under such false name was recognised by the register as the person who had previously appeared; the witness was sentenced for the perjury to imprisonment for 6 months, and the attorney for subornation of the perjury to imprisonment for one year, both without labor: it is to be observed that in this case there was no record of the perjury, as the depositions of witnesses attesting deeds before a register are not committed to writing. *N. A. R. vol.* 5, *page* 78. Where the prisoner was convicted of having produced a person to give evidence in a court of justice under a fictitious name, he was convicted of subornation of perjury, though the perjury was not completed, the fraud having been discovered before the witness was put upon his oath, and was sentenced to imprisonment with labor for 2 years. *N. A. R. vol.* 2, *page* 363. In a similar case, the person in whose favor the perjury was committed, was acquitted on the ground that he was a minor, being only fourteen or fifteen years of age, and that, although present in court during the commission of the perjury, yet he was not personally concerned in the subornation, as the suit was conducted by his gomashtah and general agent. *N. A. R. vol.* 3, *page* 280.

Cases in civil courts with intent to defraud

3310. Where two witnesses swore under fictitious names to the execution of a forged ikrarnamah, they were convicted of perjury; and the mokhtar who had introduced them, being well acquainted with the person and real name of one of the witnesses, was convicted of subornation of perjury; and all three were sentenced to stripes, tusheer, and imprisonment for 7 years; the vakeel employed in the case was acquitted of the charge of subornation, but was dismissed from his office of pleader in consequence of the strong suspicion which rested against him of having been concerned therein. *N. A. R. vol.* 1, *page* 293. Where the prisoner in a civil suit denied on oath that he had disposed of some ancestral property to a certain person, and five years afterwards in another suit contradicted that testimony by admitting on oath and proving by deeds that he had sold it to that person, and the denial was shown to have been material to the issue of the suit, he was sentenced to imprisonment for 3 years. *N. A. R. vol.* 2, *page* 202. A prisoner swore to having witnessed the payment of a sum of money on a certain day, on which date, and during many months before and after it, he was a prisoner in jail under a sentence for theft, which rendered it physically impossible that he could have witnessed the transaction; he was convicted of perjury; and his production as a witness by the person who was to benefit by the perjury was held to afford sufficient presumptive evidence against the latter to convict him of subornation of perjury; both were sentenced to imprisonment with labor for 3 years. *N. A. R. vol.* 2, *page* 361. In a similar case, where the prisoner, aged 70, swore to the authenticity of a forged receipt, he was convicted of perjury and sentenced to 2 years' imprisonment with labor. *N. A. R. vol.* 4, *page* 58. The wilful concealment of bond-debts and other property by an insolvent debtor, when examined on oath under the rules of sect. 11, Reg. II. 1806, has been punished as perjury by imprisonment for 3 years. *N. A. R. vol.* 5, *pages* 62 *and* 167.

CHAPTER III.

OF FORGERY.(a)

3311. A charge of forgery cannot be sustained, when the document alleged to have been forged is not forthcoming. N. A. R. vol. 5, page 112. Forged document must be produced.

(a) In English law the offence of forgery is defined by Blackstone to be "the fraudulent making or alteration of a writing to the prejudice of another man's right;" and by East to be "a false making, a making *malo animo*, of any written instrument for the purpose of fraud and deceit." But it is not necessary to the sustaining an indictment for forgery at common law, that any prejudice should in fact have happened by reason of the fraud; it is sufficient if it might have happened; nor is it necessary that there should be any publication of the forged instrument. The most usual kind of forgery is, where the party assumes the name and character of a person actually in existence, and by means of the credit attached thereto carries his fraud into effect: but the adoption of a false *description* and *addition*, where a false name is not assumed, and there is no person answering the description, has been held not to be forgery. A man may be guilty of forgery by the fraudulent making of an instrument, though in his own name; as if he makes a feoffment of lands to J. S., and afterwards a deed of feoffment of the same lands to J. D. of a date prior to that of the feoffment to J. S. So, if a bill of exchange, payable to A. B. or order, come to the hands of another person named A. B., not the payee, who fraudulently indorses it for the purpose of obtaining the money, this is a forgery. Making an instrument in a fictitious name, or the name of a non-existing person, is equally forgery, as making it in the name of an existing person: and it is not necessary, in order to render the act forgery, that the party should gain any additional credit by the fictitious name. The circumstance that the party making the forged instrument has assumed, and been known by the fictitious name in which it is executed, for some time before the making, will not prevent its being a forgery; there being no distinction whether the credit was given to the person of the prisoner, or the name assumed by him; but there must be a fraudulent intent in the particular transaction. It is not material whether the forged instrument be made in such a way, as, were it true, it would be of validity, or not; but then the false instrument must carry on the face of it the semblance of that which is counterfeited, and must not be illegal in its very frame. So, the false making of a will is forgery, although the supposed testator be alive. So a man may be convicted of forging an unstamped instrument, though such instrument can have no operation in law. It is not essential that the forged instrument should in all respects bear an exact resemblance to the real instrument which it purports to be; it is sufficient if it bear a substantial resemblance, such as is calculated to deceive, when ordinary and usual observation is given: but it is necessary that the forged instrument should in all essential parts bear upon the face of it the similitude of a true one, so that it be not radically defective and illegal in the very frame of it.—— As regards the proof, it is seldom that direct evidence can be given of the act of forgery. In the case of negotiable securities, the evidence is usually applied to the uttering rather than to the forging, although both are usually charged. Where the instrument is not of a negotiable nature, as in the case of a bond or will, after proof that it has been forged by some one, a strong presumption necessarily arises against the party in whose favor the forgery is made, or who has the possession of it, and seeks to derive benefit from it. Evidence that the forged instrument is in the hand-writing of the prisoner, must, if unexplained, be necessarily strong evidence of his guilt. An intent to defraud is an essential ingredient to constitute the offence of forgery. The intent is mostly evidenced by the act itself, which, from its nature, leaves in general no room for doubt upon the point. The inference is frequently confirmed by the conduct and behaviour of the guilty party in the artifices and falsehoods which he employs for the purpose of effecting his object, or of avoiding detection. The subsequent uttering or publication of the forged instrument is admissible, and strong evidence to prove the original design of forging the instrument; and whether the making or uttering of a forged instrument be done with an intent to injure a particular person as alleged, is matter of evidence for a jury. If several combine to forge an instrument, and each execute by himself a distinct part of the forgery, and they are not together when the instrument is completed, they are nevertheless all guilty as principals: as, if B make the paper, C engrave the plate, and D fill up the instrument, each without knowing that the others are employed for that purpose, they are all principals. So, if several concur in employing another to make a forged instrument, knowing its nature, they are all guilty of the forgery. *Roscoe's Digest.*

Such document not to be returned.

3312. Documents which are proved or suspected to be forgeries are not to be returned to the parties producing them. Const. No. 139.

Definition and conditions.

3313. The penalties prescribed for forgery are meant to include all fraudulent and injurious fabrications or alterations of written deeds, or of written or printed papers, of whatever description; as well as all counterfeit seals or signatures thereto. It is further hereby declared, that persons convicted of procuring, or causing, any such forgery, are liable to the same punishment, as those convicted of having actually committed the forgery at the instigation of others. Reg. II. 1807, sect. 4, cl. 3.

There must be a fraudulent intention.

3314. In order to make the offence complete, there must be a fraudulent intent. Thus, where the prisoner having tendered a security bond on plain paper, was directed to furnish it on stampt paper; and then copied the bond, including the names of the attesting witnesses, on paper of the proper value, which he then gave to the surety who signed it with his own hand, he was acquitted of forgery in copying the names of the witnesses, as he had no fraudulent intention in so doing. N. A. R. vol. 5, page 95. So, where the two prisoners, the peshkar and meer-moonshee of a collector's office, were charged with forgery in having written certain deeds of sale, and therein fraudulently inserted the word "zumeendaree" (whereas the rights of the zumeendar were never sold), they were acquitted, as the mere fact of their having copied one of the deeds of sale was not deemed sufficient ground for inferring a fraudulent intent or knowledge of the forgery, and there was no proof whatever that either of them drafted or compared the deeds, or held any communication with the purchaser, or in any way profited by the forgeries. N. A. R. vol. 4, page 53. So, as to antedate and postdate papers is very common among the natives without any fraudulent purpose, the court refused to admit such fact alone to be evidence of forgery. N. A. R. vol. 2, page 36. And the affixing the name of another in his absence, but with the permission of his constituted agent, to a security bond, was held not to amount to forgery, as the prisoners were actuated by no fraudulent intention. N. A. R. vol. 1, page 253.

So, to antedate or postdate a deed is not in itself forgery.

So, the mere signing another person's name is not necessarily forgery.

The execution of two deeds of sale or lease of the same lands is a fraud and does not amount to forgery.

3315. It seems that the execution of two deeds of sale or lease of the same estate to different persons, does not amount to forgery; it is merely a fraud: but it does not clearly appear from either of the reported cases whether it would become forgery, if the subsequent conveyance were antedated for the purpose of avoiding the former one; as is held in English law.—A prisoner tried on a charge of forgery cannot be convicted of fraud; but it is sufficient if the two offences are charged in separate counts. N. A. R. vol. 2, page 50; and vol. 6, page 2.

It is not necessary that there should be any writing; it is sufficient if the seal be forged, though the paper be blank.

3316. To the offence of fabrication in the above definition it is not necessary that there should be any writing; it is sufficient that the seal be forged, though the paper be blank. Thus, where a number of blank papers with forged seals at the top were found in the possession of one of the prisoners, he was convicted on violent presumption of fabricating papers with false seals; and was sentenced, as well as another prisoner convicted of selling the same knowing them to be false, to imprisonment for 7 years. N. A. R. vol. 2, page 3. In a similar case, the prisoner convicted on violent presumption of the forgery was sentenced to tusheer and imprisonment with labor for 7 years, and the other

prisoners convicted of privity to and concealment of the same were sentenced to 2 years' imprisonment with hard labor. N. A. R. vol. 2, page 405.

Mere possession of a forged bank-note is not punishable;

3317. The having a forged bank-note in possession is not declared to be a punishable offence by Reg. XVII. 1817, or any other regulation in force. Const. No. 361.

or the mere possession of seals bearing the names of other persons.

3318. The mere possession of seals bearing the names of other individuals does not constistute a punishable offence; as a seal-cutter or any other man may have such seals without committing the crime of forgery, and indeed without any imputation of a criminal offence. N. A. R. vol. 3, page 153.

Commitment and penalties.

Forging or uttering counterfeit coin, stamps, public securities, and bank-notes.

3319. The special rules for the commitment of cases of forgery, brought to light in the course of proceedings in the civil or other courts, have already been detailed in the preceding chapter, as the provisions enacted in regard to perjury are held equally applicable to these cases. The penalties also are the same for both offences. But the forgery here meant does not refer to the forging of counterfeit coin, public stamps, public securities, or bank-notes, which have been placed under the head of coining, in chapter 1 of book 4; see page 446: and the rules regarding the using, issuing, selling, or disposing of, such counterfeit coin, stamps, bank-notes, promissory notes, or other securities for money, knowing the same to be counterfeit; and for having in possession such counterfeit coin or stamps without lawful excuse; will be found in the same place.

Persons concerned in forging lakhiraj grants, or altering them in any respect, liable to a criminal prosecution.

3320. If it appears to any court of judicature during the course of a trial, that a grant for land to be held exempt from the payment of revenue, whether badshahee or otherwise, has been forged, or that the name of the original grantee has been erased, and any other name substituted, or that any name not in the original grant has been erased or altered or inserted, or that the denomination or the terms of the tenure in the original grant have been erased or altered, or that the date of the grant has been changed, or that the grant has been antedated, the grant is to be adjudged null and void, as far as regards the exemption of the land from the payment of revenue, and the land is to be subjected to the payment of revenue accordingly. And any person by whom any such fraud appears to have been committed, or who has been concerned therein, is, provided the court is of opinion that there are sufficient grounds for a criminal prosecution, to be committed or held to bail (according to the circumstances of the case) to take his trial before the sessions court. *Beng.* Reg. XIX. 1793, sect. 18; and Reg. XXXVII. 1793, sect 13. *Ben.* Reg. XLI. 1795, sect. 18; and Reg. XLII. 1795, sect. 13. *Ced. Prov.* Reg. XXXI. 1803, sect. 13; and Reg. XXXVI. 1803, sect. 13.

Registers of deeds are to prosecute criminally any person counterfeiting or falsifying any entry in the register books.

3321. If any person or persons shall at any time be suspected, on sufficient grounds for commitment, of counterfeiting or falsifying any entry in any of the register books ordered to be kept, or any certificate such as is directed to be granted, by this regulation [for the registry of deeds], he or they are to be prosecuted on the part of government in the criminal court of judicature; and the several registers are, as agents for the prosecution, to adopt every legal measure in their power for the proof of the crime, and the due execution of the laws against the offender. *Beng.* Reg. XXXVI. 1793, sect. 12. *Ced. Prov.* Reg. XVII. 1803, sect. 12.

Putwaree altering, fabricating, falsifying, or mutilating, the accounts of his village, or furnishing false, fabricated, or mutilated copies of the accounts—is to be held guilty of forgery.

3322. Any putwaree who alters, fabricates, falsifies, or mutilates, the accounts of the village to which he belongs, or furnishes to the canoongoe or collector false, fabricated, or mutilated copies of those accounts, is to be held and considered guilty of forgery; and is liable, on conviction before a sessions court, to the penalties which are or may be prescribed for that offence in the regulations; and any person, who causes or procures any such forgery, is liable to the same penalties as those convicted of having actually committed the offence.—This rule is applicable to all native agents employed by proprietors or farmers of land in the management of their estates or farms, or in keeping the accounts relating to them; and to proprietors or farmers of land, or their gomashtahs or other officers, where no putwaree is appointed. Reg. XII. 1817, sects. 27, 30, and 33.

Sentence to be passed on persons convicted of knowingly and fraudulently uttering forged instruments.

3323. If any person is convicted before a sessions court, or the court of nizamut adawlut, of the offence of fraudulently issuing and publishing as true, or otherwise fraudulently giving effect, or attempting to give effect, to fabricated deeds and papers, knowing the same to be false and fabricated; he is to be sentenced to imprisonment for such period, not exceeding seven years, as the session judge deems adequate to the nature and circumstances of the case; and is also, in all instances of an aggravated nature, or of a repetition of the offence, after being once convicted and discharged, to be sentenced to public exposure by tusheer. In every instance of a repetition of the offence, after a previous conviction and discharge, the session judge may further, at his discretion, sentence the offender to receive corporal punishment [now commutable to 2 years' additional imprisonment]. If a person twice convicted and discharged be again found guilty of any of the offences above specified, and the session judge is of opinion that he ought to be imprisoned for a longer period than seven years, he is to refer the trial,* with his sentiments, for the sentence of the nizamut adawlut, in pursuance of cl. 7, sect. 2, Reg. LIII. 1803. Reg. XVII. 1817, sect. 10, cls. 1 and 2.

* *But the judge may refer any case, in which he considers the sentence within his competence inadequate. See para.* 861.

The above applies to measurement papers.

3324. Measurement papers must be considered as coming within the denomination of "deeds and papers," referred to in the above provision. Const. No. 1061.

No minimum of punishment is prescribed in the above provision.

3325. As the above provision prescribes no minimum of punishment for the offence of uttering forgeries, the judge being competent to pass any sentence he considers proper not exceeding seven years, a reference for mitigation is unnecessary. N. A. R. vol. 2, page 244.

Precedents.

Cases of forgery—

of a kubaleh and receipt;

of hoondees;

of bonds;

3326. A prisoner, convicted of forging a kubaleh and receipt and producing them in court, was sentenced to imprisonment for 7 years; four others, convicted of aiding and abetting in the forgery and of perjury in attesting their signatures to the forged kubaleh, to imprisonment for 5 years; and three others, convicted of privity to the forgery and altering a pottah, to imprisonment for 3 years. *N. A. R. vol.* 4, *page* 112. A prisoner, convicted on strong presumption of forging four hoondees, and of fraudulently selling them and appropriating the price of them to his own use, was sentenced to tusheer, godna (*a*), stripes, and imprisonment with hard labor for 7 years. *N. A. R. vol.* 1, *page* 339. Two prisoners convicted of forging five bonds for the purchase of crops were sentenced to tusheer and

(*a*) The punishment of godna was awarded under cl. 1, sect. 3, Reg. II. 1807; but this is rescinded by cl. 1, sect. 12, Reg. XVII. 1817.

imprisonment for 4 years. *N. A. R. vol.* 4, *page* 114. Where the prisoner held the bond of a person, to whom he had lent a sum of money, on plain paper bearing interest at 24 per cent. per annum; and after the death of that person forged and filed a bond written on stamped paper for the same amount, and bearing the date of the original, but fixing the interest "at the rate allowed by government," he was convicted of forgery, and the court refused to mitigate the sentence of imprisonment for 3 years passed on him by the judge of circuit. *N. A. R. vol.* 2, *page* 95. A prisoner a plaintiff in a suit in a moonsiff's court convicted of causing to be forged, and another a vakeel of the court of forging, the names of three witnesses on a vakalutnamah; and both of causing the said vakalutnamah with the forged names of the three witnesses to be filed in the civil court with a view to obtain a decree for certain landed property by a pretended admission on the part of the defendant of the justice of the plaintiff's claim; were sentenced each to imprisonment for 4 years with labor in irons: the vakeel had already been sentenced in another case for issuing forged stampt paper to 2 years' imprisonment. *N. A. R. vol.* 5, *page* 105. So, three prisoners, convicted of having caused a forged ikbal-dawee, or acknowledgment of a claim, to be drawn up and filed in court, and of having fraudulently caused the same to be falsely attested, were sentenced to imprisonment for 4 years. *N. A. R. vol.* 3, *page* 93. A prisoner convicted of forging receipts during four years for the pension of a deceased person by affixing thereto the seal of the deceased, and another prisoner his servant convicted of uttering the forged receipts by presenting them and receiving the money, were sentenced to imprisonment for 3 years. *N. A. R. vol.* 2, *page* 244.

of a false vakalutnamah;

of a false ikbal-dawee;

of pension receipts.

3327. A mohurrir of an indigo factory, convicted of forgery in having altered certain vouchers of payments in order to defraud his employer, was sentenced to tusheer and imprisonment for 7 years. *N. A. R. vol.* 1, *page* 365. The prisoners altered a common receipt for rent so as to make it appear like a receipt for money due under a decree of court, and filed it in court in reply to an application from the person who gave the receipt for the enforcement of a summary decree, which he had previously obtained against them: both prisoners were sentenced, one for the forgery, and the other for the uttering it, to imprisonment for 7 years. *N. A. R. vol.* 2, *page* 210. A petition presented to a collector by a party praying for copies of certain papers, was made over to the prisoner, the copyist of the office, for the purpose of transcribing the copies: the prisoner made an addition to the list of documents by inserting one, of which he wished to obtain a copy for himself, his object in so doing being apparently to save the price of the stampt paper on which he would have had to petition the collector for the copy: this was held to be forgery, and he was sentenced to imprisonment for one year. *N. A. R. vol.* 5, *page* 174. The agent of a dawk-contractor was convicted of opening the government dawk wallet, after it had been despatched from the post-office, and extracting the telegraph, and altering the hour of arrival and despatch of the government mail with a view to defraud the government: the session judge passed sentence of two years' imprisonment with labor in irons; but the nizamut adawlut held that the crime established amounted to forgery, and directed him to pass the minimum sentence prescribed by cl. 2, sect. 9, Reg. XVII. 1817, and to refer the trial for the court's order should he think that punishment too severe. *Const. No.* 1099. A mohurrir of a police thana, with a view to screen himself from the

Cases of fraudulent and injurious alterations—of vouchers;

of a receipt for rent;

of a petition presented in a public office praying for copies of certain papers;

of a dawk-telegraph;

of a public record.

charge of having deputed a burkundaz only to enquire into a case of theft, falsified the magistrate's record to make it appear that the jemadar had been deputed in another case; this was held to be forgery, but of the lightest description, and the prisoner was sentenced to 6 months' imprisonment. *N. A. R. vol.* 2, *page* 99.

Putwaree furnishing mutilated accounts.

3328. A putwaree convicted of forgery in furnishing a mutilated return of the village accounts by omitting to enter therein 1200 beegahs of lakhiraj land, under sect. 27, Reg. XII. 1817, was sentenced to imprisonment for 3 years, without labor and irons. *N. A. R. vol.* 5, *page* 113.

Cases of knowingly and fraudulently uttering—fabricated perwannahs;

3229. A prisoner convicted of issuing forged perwannahs, knowing them to be such, and thereby fraudulently obtaining as the authorized tulubana and appropriating various sums of money, was sentenced to stripes and imprisonment for 7 years with labor: the prisoner had on a former occasion been sentenced to five years' imprisonment for a similar offence. *N. A. R. vol.* 4, *page* 83. Where the prisoners were convicted of having forged endorsements for tulubana on perwannahs which they were directed to serve on certain parties, and of having thereby extorted unauthorized tulubana, they were sentenced to imprisonment for 4 years with hard labor. *N. A. R. vol.* 3, *page* 303. The nazir of the special deputy collector's office was convicted of issuing a forged roobukaree, knowing the same to be false and fabricated, and thereby fraudulently obtaining 356 rupees from the collector's treasury, with intent to defraud government, and was sentenced to imprisonment for 5 years. *N. A. R. vol.* 5, *page* 193. A prisoner convicted of having issued a forged note, purporting to be a draft drawn by the collector of Juanpore in favor of the prisoner on the collector of Benares for 4,700 rupees, knowing it to be forged, was sentenced to imprisonment for 5 years. *N. A. R. vol.* 2, *page* 111. Where the prisoner filed a deed of sale which was a palpable forgery, having been executed very clumsily, it was held that the mere fact of filing it by the person interested in establishing its contents affords sufficient presumption that he uttered it knowing it to be forged; and he was sentenced to imprisonment for 2 years with labor. *N. A. R. vol.* 2, *page* 454. In order to obtain the more ready enforcement of a decree, the date was altered in seven different places from 1824 to 1825, and it was so presented in court with a petition for its execution; the decree-holder, his mokhtar, and his vakeel, who filed the document, were convicted of fraudulently attempting to give effect to a falsified instrument, knowing it to be such, and were sentenced to imprisonment for 2 years without labor and irons. *N. A. R. vol.* 3, *page* 28. A prisoner convicted of filing in a civil suit a forged receipt for money paid, knowing it to be such, and of subornation of perjury in producing a person to swear to the authenticity of the said receipt, was sentenced to imprisonment for 3 years with labor. *N. A. R. vol.* 4, *page* 56. Three prisoners, convicted of fraudulently issuing and publishing as true (by filing it in court) a forged receipt for money paid, knowing the same to be false and fabricated, were sentenced each to imprisonment for 4 years, and a fine of 50 rupees each in lieu of labor. *N. A. R. vol.* 5, *page* 181. Where the prisoner gave a receipt in a fictitious name for money received by him from a government treasury, he was sentenced to imprisonment for 6 months without labor or irons. *N. A. R. vol.* 5, *page* 59. A prisoner was convicted of having personated a dewanny chuprassee, and of having with others arrested the prosecutor by means of a forged summons; this

false endorsements on perwannahs;

forged roobukaree applying for money;

forged draft for money;

forged deed of sale;

decree fraudulently altered;

forged receipt for money paid;

forged summons.

was held to be forgery, and he was sentenced to imprisonment for 3 years. *N. A. R. vol.* 2, *page* 354.

Attempting to give effect to a forged note.

3330. A prisoner convicted of having with him a forged note, and of having fraudulently carried it to the prosecutor with a view to obtain and embezzle money, was sentenced to imprisonment for three years. *N. A. R. vol.* 2, *page* 483.

Procuring forged signature.

3331. A prisoner convicted of having knowingly allowed a person to affix a fictitious signature to a kubooleeut, and of having concealed his knowledge thereof for his own purposes, which afforded strong presumption that he willingly and knowingly caused the forgery of the signature to the kubooleeut, was sentenced to 3 years' imprisonment with labor and irons. *N. A. R. vol.* 6, *page* 3.

Vakeel dismissed on suspicion of having presented a forged deed, and of subornation of perjury in support of it.

3332. An authorized pleader of the civil court, though acquitted from want of positive evidence of the charge of forging a document and presenting it to the court, knowing it to be forged, was dismissed from office in consequence of suspicion arising from his having presented a forged deed and bringing forward false witnesses in support of it. *N. A. R. vol.* 1, *page* 293.

BOOK VIII.

OF SPECIAL RULES REGARDING PARTICULAR CLASSES OF PERSONS.

CHAPTER I.

OF EUROPEAN BRITISH SUBJECTS.

Amenability.
Descent.

3333. The parents of an individual being Europeans, he must be considered to be an European, without reference to the place of his birth. Const. No. 397.

Illegitimate children are classed with their mother.

3334. Illegitimate children should be classed with their mothers; and must be considered British subjects, European foreigners, or Americans, according as their mothers may respectively be British, foreign European, or American. Thus, the illegitimate son of an European British subject by a native mother can be tried by the local criminal courts on a charge of adultery: but a married woman, the legitimate child of a British father, is not amenable to the local courts on a similar charge preferred against her by her husband. Const. Nos. 806 and 978.

Example in a special case.

3335. In the case of a prisoner who alleged that his father was a German, and his mother a Scotchwoman, and that he was born at Madras, the advocate general gave it as his opinion that he must be considered a British subject amenable to the jurisdiction of the supreme court. But this opinion seems to require modification, especially as regards the mixed progeny of Europeans and natives; and cannot be considered as an established rule, since the nizamut adawlut objected to the doctrine, and held the prisoner amenable to the local courts on a ground which left the question still open. N. A. R. vol. 2, page 111.

If a person declines the jurisdiction of the local courts on the ground of birth or descent, the *onus probandi* will lie with him.

3336. If a person is found residing in the mofussil in such circumstances as do not almost necessarily designate and prove him to be an European British subject, and even in that case which is only one of easier proof, it is for such person to show and prove his right to decline the jurisdiction of the local courts. The practice of the supreme court, in requiring its jurisdiction to be proved by the prosecutor or plaintiff, is not at all founded on general principles, but is contrary to them, and has been introduced in consequence of the jurisdiction of the supreme court being expressly confined to particular and specified classes of persons; on which also has been superinduced a rule of the court, requiring the *mode* of being liable to the jurisdiction to be stated in every plaint, indictment, and other proceeding and *proved* accordingly, instead of leaving it to the defendant or prisoner to plead to the jurisdiction, or holding him concluded by his silence, which would be much

more convenient. But the jurisdiction is to be presumed in all courts of general jurisdiction, as the provincial courts must be deemed to be; and it is incumbent on the party declining their jurisdiction to show his exemption: at the same time, though the *onus probandi* as to his birth will lie on the defendant, yet unquestionably, the liberty of adducing the proof cannot be denied. Where the prisoner was unable to prove himself an European British subject, the nizamut adawlut held his commitment and trial to be legal, and passed upon him sentence of punishment. N. A. R. vol. 2, page, 111. Const. No. 759.

But in the supreme court the proof of jurisdiction lies with the prosecutor.

3337. In the event of its being found necessary to commit an European British subject for trial before the supreme court, it is necessary for the conviction of such person that there be direct proof of his amenability to that court. The mode of proof consists in the evidence of a credible person, who knows the accused, and his place of birth, or who has heard him declare of what country he is. C. O. No. 197 of vol. 3.

Persons resident in India liable to what courts.

*3338. The servants of the Company, as all other of her Majesty's subjects resident in India, are amenable to the courts of oyer and terminer and jail delivery and courts of general or quarter sessions of the peace in any of the British settlements in India, for all murders, felonies, homicides, manslaughters, burglaries, rapes of women, perjuries, confederacies, riots, routs, retainings, oppressions, trespasses, wrongs, and other misdemeanors, offences, and injuries whatsoever by them done, committed, or perpetrated, in any of the countries or parts of Asia, Africa, or America, beyond the Cape of Good Hope to the Straits of Magellan, within the limits of the exclusive trade of the said Company, whether the same be done, committed, or perpetrated against any of her Majesty's subjects, or against any other person or persons whatever. 26 Geo. III. cap. 57, sect. 29.

Europeans not British subjects are liable to the local courts;—if British subjects, to the supreme court.

3339. All Europeans, not British subjects, are amenable to the authority of the magistrates and sessions courts within whose jurisdictions they are apprehended and brought to trial, in common with the natives of the country. But European British subjects, for all acts of a criminal nature, are amenable only to the supreme court of judicature at Fort William; and in the event of any charges being preferred against them, which may render them liable to a criminal prosecution in that court, the process detailed below is to be observed for their apprehension and trial. *Beng and Ben.* Reg. II. 1796, sect. 2, cl. 1. *Ced. Prov.* Reg. VI. 1803, sect. 19, cl. 1.

European British subjects are not penally liable to the local courts.

3340. European British subjects have not by any Act of the legislature been made amenable to the local authorities in the administration of the penal enactments of the government of India. Const. No. 1296.

Offences committed in foreign territories are punishable by all courts of competent jurisdiction.

3341. All her Majesty's subjects, as well servants of the Company as others, are amenable to all courts of justice, both in India and Great Britain, of competent jurisdiction to try offences committed in India, for all acts, injuries, wrongs, oppressions, trespasses, misdemeanors, offences, and crimes whatever, by them or any of them done or committed in any of the lands or territories of any native prince or state, or against their persons or properties, or the persons or properties of any of their subjects or people, in the same manner as if the same had been done or committed within the territories directly subject to and under the British government in India. 33 Geo. III. cap. 52, sect. 67.

Duties of magistrate and justice.

Course to be adopted, whenever an European British subject, residing in the interior of the country, is guilty of any act of illegal violence, injustice, or oppression, towards the natives, in the prosecution of indigo, or other commercial transactions.

3342. The nizamut adawlut are to bring under the special notice of government every case in which, from the proceedings or information before them, they are satisfied that an European British subject, residing in the interior of the country, has been guilty of any act of illegal violence, oppression, or injustice towards the natives in the prosecution of indigo or other commercial transactions. And whenever such British subject appears to a magistrate, on satisfactory evidence, to have been guilty of any illegal act of the above description, and the proceedings held in the case are not referrible in regular course to the nizamut adawlut, he is to transmit a specific report of the facts of the case, with a copy of his proceedings, to that court; who, if they consider the alleged act of illegal violence or oppression to be proved, and to be of a nature demanding the notice of government, are to report their sentiments accordingly. C. O. No. 289 of vol. 1.

Report to be made to the superintendent of police of aggravated affray, in which the servants of an indigo factory are engaged.

3343. Magistrates are to submit to the commissioners of circuit, for their examination, every case of violent affray, attended with aggravating circumstances, in which the servants of an indigo factory are engaged, whether the European at the head of the establishment has been included in the charge or not: and the commissioner of circuit is to furnish with his annual report, in his capacity of superintendent of police, a specific statement of such cases. C. O. No. 22 of vol. 2.

Magistrate how to proceed when natives are charged with offences in concert with European British subjects:

3344. Magistrates are to refrain from trying themselves, or committing for trial before the sessions court, natives charged with or suspected of being concerned with European British subjects in the commission of offences, until they have made a reference to the nizamut adawlut, and have been furnished with instructions for their guidance in the case. But the trial of a native is not vitiated under this order, if the name of an European is only indirectly introduced in the transaction for which the commitment is made: the European must be charged with the offence, or so far implicated as to warrant his commitment. C. O. No. 79 of vol. 1. N. A. R. vol. 2, page 73.

this order does not refer to the preliminary enquiry.

3345. The above order does not require the magistrate to apply for instructions in regard to the preliminary enquiry; it is only when the result of that enquiry leads to the commitment of the European, that the application becomes necessary. Letter of nizamut adawlut, August 12, 1836, in Mr. Cheap's edition of the Circular Orders.

Magistrate, who is qualified to act as justice of the peace, how to proceed when a charge is preferred before him against an European British subject.

3346. If the magistrate before whom a charge is preferred against any European British subject, has taken the oaths of qualification as a justice of the peace, and thereby has become vested with the full power and authority of a justice of the peace, under the provision made for that purpose by the Act of 21 George III. Cap. 65; the magistrate, upon the charge or information being lodged before him upon oath, is to proceed to the apprehension of the party accused; and, provided the evidence against him be sufficient to warrant the same, to his commitment for trial [or admission to bail], as he is authorized and required to do by virtue of his commission as justice of the peace; and if there appear to him sufficient grounds for committing such British subject for trial, he is to issue a warrant under his signature and official seal, directed to the sheriff of Calcutta, and commanding him to receive the prisoner into his custody for trial at the ensuing sessions; he is likewise to bind over the prosecutor to repair to Calcutta before the session next ensuing,

and is to take recognizances from the witnesses for their appearance at the trial. *Beng. and Ben.* Reg. II. 1796, sect. 2, cl. 2. *Ced. Prov.* Reg. VI. 1803, sect. 19, cl. 2.

If he holds to bail or commits, the papers are to be transmitted to the clerk of the crown;

3347. Whenever a magistrate who has taken the oaths of qualification as a justice of the peace, holds any British European subject to bail, or deems it necessary to commit any such person to the jail of Calcutta, to take his trial before the supreme court of judicature for any offence of a criminal nature; the magistrate is to transmit the original depositions taken on the occasion (together with translations of any papers not being in the English language) to the clerk of the crown. The magistrate is likewise to transmit copies of the said depositions (together with translations of any papers not being in the English language) to the secretary to government, for the information of the governor; who, in cases in which he considers it to be necessary from the aggravated nature of the offence charged against the person accused, or on any other substantial ground, is to order the prosecution to be conducted by the law officers of government and at the public expense. Reg. XV. 1806, sect. 2.

and to government, if he thinks that the government should conduct the prosecution.

Magistrate, not qualified as justice of the peace, how to proceed on receiving charge against such person, if the offence charged is not bailable:

3348. Whenever an European British subject is charged on oath before a magistrate, who has not taken the oaths of qualification as a justice of the peace, with a criminal offence which according to the law of England is not bailable, the magistrate is to make a summary inquiry into the circumstances of the charge without delay; and if, after making such inquiry, he is of opinion, that there are grounds for bringing the person accused to trial before the supreme court of judicature, he is to send the person accused, under safe custody, to her Majesty's justices of the peace at the police office in Calcutta, accompanied by the witnesses against the prisoner, with a letter, stating the nature of the case, requesting that the justices at Calcutta will take the necessary measures for bringing the person accused to trial before the supreme court of judicature. The magistrate, by whom the prisoner is sent to Calcutta, is at the same time to transmit a copy of all the proceedings held on the occasion (together with translations of any papers not being in the English language) to the secretary to government, to enable the government to determine whether the prosecution should be undertaken by the law officers of government, and at the public expense, or otherwise. *Beng. and Ben.* Reg. II. 1796, sect. 2, cl. 3. *Ced. Prov.* Reg. VI. 1803, sect. 19, cl. 3. Reg. XV. 1806, sect. 3.

and how to proceed, if the offence charged is bailable.

3349. Whenever any person charges an European British subject before a magistrate, who has not taken the oaths of qualification as a justice of the peace, with a bailable offence, it is the duty of the magistrate to explain to the complainant the course which he should pursue for the purpose of obtaining redress, that is, by application to the justices of peace at Calcutta or to the grand jury. It is likewise the duty of the magistrate, after calling upon the person accused for his reply to the complaint, to report the case to government; at the same time stating, on a consideration of the distance at which the parties reside from the presidency, of the poverty of the complainant or of other circumstances, whether it would in the opinion of the magistrate be proper, that the expense of the prosecution should be defrayed by government. The government, on receipt of such report, will pass such orders on the subject as appear advisable; and will at the same time direct, in cases which appear to require it, that the prosecution shall be conducted by the law officers of the Company. Reg. XV. 1806, sect. 5.

Diet money may be advanced to the prosecutor and witnesses if they are indigent.

* *v. para.* 337.

3350. In all cases of inability of the prosecutor or witnesses to defray the charge of the journey to Calcutta, the magistrate is authorized to make them the same allowance, as by sect. 26, Reg. IX. 1793,* he is authorized to make to prosecutors and witnesses in need of such assistance during their attendance on the sessions courts, viz. a daily allowance of two annas each during their attendance on the supreme court, including the actual period of their journey to and from Calcutta; or sufficient time for their return after their discharge from the court, in cases wherein it appears that they have voluntarily protracted their return beyond what was necessary. *Beng. and Ben.* Reg. II. 1796, sect. 3. *Ced. Prov.* Reg. VI. 1803, sect. 19, cl. 4.

These provisions do not refer to petty cases not warranting commitment.

3351. Complaints of petty criminal offences against British subjects, such as do not warrant commitment for trial before the supreme court, were not meant to be included in the above provisions, when the magistrate is not qualified to act as a justice of the peace. Const. No. 20.

In case of commitment the depositions are to be forwarded to the Company's solicitor.

3352. In all cases where Europeans in the districts are charged with offences, for which they will be tried in the supreme court, the magistrate is, if time will admit of it, to forward the depositions to the Company's solicitor, in order that he may receive the advice and suggestions of that officer on the evidence which is to be adduced at the trial. C. O. No. 34 of vol. 3.

3353. The forms of warrants, recognizances, &c. in use by her Majesty's justices of the peace, given in appendix A, Nos. 41 to 47, were prepared by the Company's solicitor. C. O. Sup. Pol. *L. P.* No. 27 of 1844. Other useful forms have been supplied.

Rules regarding the examination of European British subjects.

3354. European British subjects, brought before the magisterial authorities for any alleged offence, should not be interrogated upon the matters charged against them, but merely asked if they wish to make a statement in regard to the charge, and at the same time warned that whatever they may say will be made use of against them. After such question and warning, the statements made by the accused are to be taken down; and the following form of examination is to be made use of:—"The examination of A. B, of——, indigo-planter, taken by me, J. P. Esquire, magistrate of —— and one of Her Majesty's justices of the peace, the —— day of — 184–: the said examinant being charged on the solemn affirmation of C. D. of——, with having (*here state the charge*) and being duly cautioned, saith ————. Taken before me the day and year above mentioned, J. P."(a) C. O. No. 199 of vol. 3.

(a) The following rules, by which a justice of the peace should investigate a charge made before him, are extracted from Chitty's Burn's Justice, vol. 2, pages 93 *et seq.*—The first step in the investigation as to the offence is to call for and examine the witnesses for the accusers. The whole proceedings of the examination should be in the presence and hearing of the accused. The witness should be informed as to the purpose for which he is required to give evidence; or, in other words, that there is a person under charge against whom he is required to give evidence; otherwise the witness could not be punished for refusing to give evidence. Before administering the oath to the witness, the magistrate had better enquire who and what the witness is; and in some cases it would be as well shortly to ascertain what he intends to prove, for it seems that no witness ought to be examined who is not competent, according to the general rules of evidence, to give evidence. [For the rules regarding the incompetency of witnesses, see paras: 441 *et seq.*] After the competency of the witness is ascertained, he should be sworn; the following is the usual form of oath prescribed to be taken by a Christian: "*You*

Examination of accusers and witnesses.

3355. An European defendant filing his pleadings and petitions in the vernacular language on the prescribed stamp, may be permitted to add translations thereof in English on unstampt paper; and all processes issued to him should be written in the ordinary language of the court and in English. It is not the duty of the court to furnish the defendant with translations; he must procure a person duly qualified to interpret for him. The deposition of an European witness must be recorded in English [or, *semble*, in the language in which it is delivered: *see para.* 375]. Const. No. 1035.

Such persons may file English translations of their vernacular pleadings.

Deposition of such persons should be taken in English.

shall true answer make to all such questions as shall be demanded of you; so help you God." The examination of the witness must be upon oath administered previous to the examination, or such examination will amount to nothing. If a magistrate committed a party without an oath made before him, he would be liable to an action if the prisoner were acquitted. Leading questions should not be proposed to a witness; nor irrelevant questions; nor questions which need not be answered. The witnesses should be examined before the accused, and he may cross-examine them. They should, especially if they appear unwilling, be examined separately; and no one who has already been completely examined should be permitted, if it be possible to avoid it, to inform any other who has yet to be examined to what particulars his evidence has extended: indeed, in most cases it would be best and fairest to keep all the witnesses away but the one under examination. The answers to the examinations, as they are given, should be immediately put into writing in a plain and intelligible manner, and as near as possible in the very words used by the witness. The examination, when put into writing, is usually read over, and tendered to the witness for signature; and he should sign it; though he is not actually obliged to do so, as such signature is not absolutely necessary, but is only taken for precaution and facility of future proof. If the slightest case even of suspicion be made out against the accused, he should be asked by the justice if he has anything to say against the charge: he should not be put on his oath. A prisoner, when taken on suspicion before a magistrate, is to be allowed to speak voluntarily, and to give his account freely; and he ought not to be pressed to answer, examined, or questioned by the magistrate like a common witness: and, where a person had been so examined, his account was rejected as inadmissible, though nothing like a threat or promise had been used. The examination of the prisoner, when reduced into writing, ought to be read over to him, and tendered to him for his signature: it ought to be subscribed also by the magistrate: the signature however of the prisoner is not essentially necessary, but only for precaution and for the facility of future proof. It has been held that a written examination containing the prisoner's confession, taken by a committing magistrate, and read over to the prisoner, who admitted it to be true, but refused to sign it, would have been evidence at common law: in this case the examination was rendered admissible by the prisoner acknowledging the truth of its contents; but if the prisoner had not made such admission, and had refused to sign it after it had been read over to him, it could not have been received in evidence. Whether he be silent or not, it is best that the justice should put down in writing the facts exactly as they take place before him; and if he is silent, or declines saying anything in his behalf, the examination, after stating the offence with which the party is charged, as in the form [given in the text], should proceed thus: "*And the witnesses against the said A. B. being examined in his presence, the said A. B. is now asked by me if he wish to say anything in his own behalf; whereupon the said A. B. answereth nothing, or saith*"—stating what the accused may say, as nearly as possible in the very words he uses. The accused may, if he chooses, call witnesses, and they may be examined on oath, like the witnesses against him; and their examination should be put into writing, like the rest. If more than one person be accused, each of them should be examined apart from the rest, in order that an opportunity may be afforded of detecting any variations in their story. The depositions should be taken down in writing in the very words used by the witness, or as nearly as possible in those words, and not in any law technicalities, or words not made use of by him. In almost all cases it would be infinitely better if the depositions were taken in the first person, and if, after the introductory part, which generally concludes with the words "who saith as follows", the deposition proceeded to state "I saw, &c. at such a time and place", instead of saying "he, this examinant", or "he, this deponent"—terms which many witnesses do not understand, and perhaps may conceive to mean some other person. Only so much as is material need be taken down. If the original information and evidence taken before the warrant was issued contain a complete case, it is the practice after re-swearing the accuser and witnesses, to read over their former depositions in their presence and that of the prisoner, and then to state to the latter that he is at liberty to ask the prosecutor and witnesses any questions respecting the charge against him; and, if he declines so doing, the examinations are not again gone over, but a fresh jurat is

Examination of accused;

his signature;

his witnesses;

If several offenders.

Depositions how to be taken.

Observations of the advocate general regarding the general duties of a justice of the peace.

3356. The following observations in regard to the duties of a justice of peace in this country were recorded by the advocate general in 1809:—"Whether persons holding the office of justice of peace are, or are not, authorized to exercise any specific power, or (which is the same thing) bound to discharge any specific duty, in this country, which belongs to the office of justice of the peace in England, must in every instance depend upon the question, whether that part of the English law, on which the given power or duty depends, is or is not applicable in this country. There are some broad lines which might be laid down for determining this question in certain cases; but in many cases it is and must be matter of nice judicial discretion. As I see no practical use, but on the contrary a great deal of inconvenience, in attempting to describe generally what matters are and what are not cognizable by justices of the peace here, I beg to decline it. The cases of the most common occurrence are attended with no difficulty; and the course which the magistrates have to take in them is, or easily may be, well known. If any should occur, which are out of the ordinary routine, the easiest and safest way for the magistrate is to apply to the government for instructions, which may be always obtained without any great delay. And if the case should be such as not to admit of that delay (though I can hardly imagine such a case) the magistrate may, I am sure, confidently act for the best; refusing or granting his interference as he thinks most expedient for the purposes of justice and public convenience. If his intentions are upright, the law will hold him harmless of any personal consequences; and, speaking from my own experience, I have no doubt that the government would always think itself bound to defend him if attacked where his motives were unquestionable."(b) C. O. No. 59 of vol. 1.

Rules regarding the requisition and forfeiture of recognizances to keep the peace.

3357. When it appears necessary to a magistrate, in his capacity of justice of the peace, to take penal recognizances, he should consult the advocate general if in doubt as to the legality of the proceeding. And if he desires to enforce the forfeiture of such recognizances, he must transmit them to the clerk of the crown before the next ensuing sessions of the supreme court, as the only proceeding for the forfeiture is in that court. The recognizance should always distinctly specify the time for which it is to continue in force:

Recognizance to prosecute or give evidence.

Refusing to give evidence.

made to them; and this even before a fresh magistrate. The papers are then to be signed by the parties deposing, and also by the justice before whom they are taken; but those formalities are not absolutely requisite. When the justice has decided upon bailing or committing the accused, he should take the recognizance of the prosecutor to prosecute, as also the recognizance of the material witnesses to appear against the party accused. If more than one are to be bound to prosecute, the recognizances should not be taken separately. Where goods have been obtained by false pretences, the recognizance to prosecute should be in double the value of the goods. Infants and married women, who cannot legally bind themselves, must procure others to be bound for them; infancy however is no ground for discharging a forfeited recognizance to appear and prosecute for a felony. If the prosecutor or witness refuse to give such recognizance, the magistrate has power to commit him; but a justice of the peace is not authorized by law to commit a witness willing to enter into a recognizance for his appearance to give evidence against an offender, merely because such witness is unable to find a surety to join him in such recognizance; nor ought the justice to require such surety; the party's own recognizance (at the peril of commitment) is all that ought to be required.

(b) The remainder of the opinion of the advocate general given in the above circular order refers to cases of forcible entry, which have since then been made cognizable by magistrates by the 53rd George III.; and it is therefore useless now to quote it. It has been ruled that no English statute of a later period than 13th George I. is applicable to India, unless its extension is expressly declared therein.

but the amount of the penalty of such recognizances is not limited by the amount of penalty which a magistrate is authorized to levy from an European British subject under statute 53 George III. cap. 155, sect. 105. Govt. order, June 9, 1830. Const. Nos. 446 and 826.

Powers of magistrate.

Magistrate has jurisdiction in cases of assault, forcible entry, or other injury accompanied with force committed by European British subjects on natives of India.

3358. Whereas his Majesty's British subjects resident in the British territories in India, without the town of Calcutta, are now by law subject only to the jurisdiction of his Majesty's court at Calcutta, and are exempted from the jurisdiction of the courts established by the Company within the said territories, to which all other persons whether natives or others, inhabitants in the said territories without the limits of Calcutta, are amenable: and whereas it is expedient to provide more effectual redress for the native inhabitants of the said territories, as well in the case of assault, forcible entry, or other injury accompanied with force, which is committed by British subjects at a distance from the place where his Majesty's court is established, as in case of civil controversies with such British subjects; —it is therefore enacted, that it is lawful for any native of India, resident in the East Indies, or parts aforesaid, and without the town of Calcutta, in case of any assault, forcible entry, or other injury accompanied with force, alleged to have been done against his person or property by a British subject, to complain of such assault, forcible entry, or other injury accompanied with force, not being felony, to the magistrate of the zillah or district where the alleged offender is resident, or in which such offence has been committed; and such magistrate has power and authority, at the instance of the person so complaining, to take cognizance of such complaint, to hear parties, to examine witnesses, and having taken in writing the substance of the complaint, defence, and evidence, to acquit or convict the person accused; and, in case of conviction, to inflict upon such person a suitable punishment by fine, not exceeding 500 rupees, to be levied in case of non-payment by warrant under the hand of the said magistrate, and upon any property of the party so convicted, which may be found within the said district; and if no such property is found within the said district, then it is lawful for the said magistrate, by warrant also under his hand, to commit such offender to some place of confinement within the said zillah or district, which in the judgment of the said magistrate is fit for receiving such offender; or if there is no fit place of confinement, then to the jail of the presidency, to remain there for a period not exceeding two months, unless such fine is sooner paid; and it is lawful for the said magistrate to award the whole or any portion of such fine to the party aggrieved, by way of satisfaction for such injury. Provided always, that in all cases of conviction of a British subject, under the provision hereinbefore contained, the magistrate before whom such conviction takes place is forthwith to transmit copies of such conviction, and of all depositions and other proceedings relative thereto, to the government to which the place wherein the offence has been committed is subordinate; provided also, that all such fines are to be paid in the first instance to the magistrate before whom the party offending is convicted, and the amount thereof, after making such satisfaction to the party aggrieved as aforesaid, if any, is to be transmitted by such magistrate to the clerk of the crown, or other officer to whom it belongs to receive fines in her Majesty's court of oyer and terminer and jail delivery for the province within which the offence has been committed; and such fines are to be disposed of in the same manner as other fines imposed by such court of oyer and

Magistrate how to proceed in such case; and what sentence he may pass.

The fine may be awarded to the aggrieved party.

Copy of conviction and proceedings to be sent to the local government; and fine, if not awarded to the aggrieved party, to the clerk of the crown.

Such convictions are removable by writ of *certiorari* into the supreme court.

terminer and jail delivery: provided also, that all such convictions are removable by writ of *certiorari* into the said court of oyer and terminer and jail delivery, in the same manner, and upon the same terms and conditions, and are to be proceeded upon in the same manner in every respect as is directed in the Act of the thirty-third year of his Majesty's reign, with regard to other convictions before justices of peace* in the British settlements or territories in India: provided also, that nothing herein contained is to extend or to be construed to extend, to prevent such magistrate from committing or holding to bail any British subject, charged with any such offence before him, in the same manner as such British subject might have been committed or holden to bail if this Act had not been passed, where the offence charged appears to such magistrate to be of so aggravated a nature as to be a fit subject for prosecution in any of her Majesty's courts to which such British subjects are amenable. 53 Geo. III. cap. 155, sect. 105.

* *v. paras.* 3397 *and* 3398.

But this provision is not meant to prevent the magistrate from committing the accused to the supreme court, if the offence charged is of an aggravated nature.

Magistrate has jurisdiction in cases of debt, not exceeding 50 rupees, alleged to be due to natives from European British subjects.

3359. It is further enacted that in all cases of debt not exceeding the sum of 50 rupees, alleged to be due from any British subject to any native of India resident in the East Indies or parts aforesaid, and without the jurisdiction of the court of requests established at Calcutta, it is lawful for the magistrate of the zillah or district where such British subject is resident, or in which such debt has been contracted, to take cognizance of all such debts, and to examine witnesses upon oath, and in a summary way to decide between the parties, which decision is to be final and conclusive to all intents and purposes; and in all cases where any such debt is found to be due from any British subject to any such native of India, the amount thereof is to be levied in the same manner, and subject to the same regulations and provisions in respect to the commitment of the debtor, as are hereinbefore made and provided in respect to the levying of fines in case of the conviction of a British subject before such magistrate.(a) 53 Geo. III. cap. 155, sect. 106.

Amount awarded how to be levied.

Magistrate has jurisdiction in such cases, though he is not a justice of peace.

3360. A magistrate, or other officer exercising the full powers of a magistrate, who has not taken the oaths of qualification as a justice of the peace, may take cognizance of complaints against European British subjects to the extent specified in the provisions of the two preceding paragraphs. C. O. No. 57 of vol. 2. N. A. R. vol. 4, page 41. Const. No. 900.

But officers not exercising the full powers of a magistrate are not competent.

3361. But an assistant to a magistrate, not vested with full powers, is not competent to take cognizance of such cases. Const. No. 595.

If several charges are preferred separately against an European British subject, the sentences on conviction may be likewise separate.

3362. Where an indigo planter, an European British subject, was accused of using violence to four individuals, and the magistrate applied to the nizamut adawlut for information as to his competency to award a separate punishment for each offence, it was held that, if the offences were charged separately, there was no reason why the sentences on conviction should not be likewise separate. The court observed at the same time, that in

(a) This provision is repealed as to debts due from officers and soldiers being European British subjects by 4 Geo. IV. cap. 81, sect. 57. And, as it was enacted to provide more effectual redress in such civil controversies at a time when European British subjects were not amenable to the provincial civil courts, it might now be presumed that it is rendered invalid with regard to all such persons by Act XI. 1836, which declares that no one is to be excepted from the jurisdiction of such local courts by reason of place of birth or descent: but the nizamut adawlut has ruled that it must be considered in full force until expressly repealed. That court has also ruled that wages must be held to be a debt within the meaning of the term as used above.

such cases confinement is authorized only in default of payment of fine; and that if, on investigation, the magistrate should be of opinion that the offender ought to be brought to trial before the supreme court, he should proceed in the usual manner, reporting the case for the information and orders of government. Const. No. 632.

Such persons may appear by attorney.

3363. There appears no reason why Europeans, charged with offences under the above provisions, should not be allowed the privilege of appearing by attorney, which is enjoyed by natives.(a) Const. No. 570.

Powers of justice.

Who may be admitted to bail on a charge of felony, and who may not: and rule for taking evidence on behalf of the person charged.

3364. Where any person is taken on a charge of felony or suspicion of felony before a justice of the peace, at any place beyond the local limits of the jurisdiction of any of her Majesty's courts of justice erected or to be erected within the British territories under the government of the East India Company, and the charge is supported by positive and credible evidence of the fact, or by such evidence as if not explained or contradicted raises in the opinion of the justice a strong presumption of the guilt of the person charged, such person is to be committed to prison by such justice in the manner hereinafter mentioned; but if the evidence given in support of the charge is not in the opinion of the justice such as to raise a strong presumption of the guilt of the person charged, and to require his or her committal, or such evidence is adduced on behalf of the person charged as in his opinion weakens the presumption of his or her guilt, but there notwithstanding appears to him, in either of such cases, to be sufficient ground for judicial inquiry into his or her guilt, the person charged is to be admitted to bail by such justice in the manner hereinafter mentioned: provided always that nothing herein contained is to be construed to require any such justice to hear evidence on behalf of any person so charged as aforesaid, unless it appears to him to be meet and conducive to the ends of justice to hear the same. 9 George IV. cap. 74, sect. 2.

Before any person charged with felony is bailed or committed, the justice is to take down in writing the examination, &c. and to bind witnesses to appear at the trial.

3365. The justice of peace, before he admits to bail or commits to prison any person arrested for felony or on suspicion of felony, is to take the examination of such person, and the information upon oath of those who know the facts and circumstances of the case, and is to put the same or as much thereof as is material into writing, and the justice is to certify such bailment in writing; and every such justice has authority to bind by recognizance all such persons, as know or declare any thing material touching any such felony or suspicion of felony, to appear at the next court of oyer and terminer or jail delivery, or superior criminal court or sessions of the peace, at which the trial thereof is intended to be, then and there to prosecute or give evidence against the party accused; and such justice is to subscribe all such examinations, informations, bailments, and recognizances, and to deliver or cause the same to be delivered to the proper officer of the court in which the trial is to be, before or at the opening of the court. 9 George IV. cap. 74, sect. 3.

Examinations, &c. to be delivered to the supreme court.

(a) While recording the above opinion, the court observed "that they were not the authority to construe Acts of parliament." Now, by sect. 1, Act XXII. 1839, persons tried for any offences in any of Her Majesty's courts of justice are admitted, after the close of the case for the prosecution, to make full answer and defence thereto by counsel learned in the law, or by attorney in courts where attornies may practice as counsel: and by sect. 2, in cases of summary conviction by a magistrate or justice of peace, exercising jurisdiction within the limits of any of her Majesty's supreme courts, persons accused are admitted to make their full answer and defence and to have all witnesses examined and cross-examined by counsel or attorney.

Duty of justice on charges of misdemeanor.

3366. Every justice of the peace, before whom any person is taken on a charge of misdemeanor or suspicion thereof, is to take the examination of the person charged, and the information upon oath of those who know the facts and circumstances of the case, and is to put the same, or as much thereof as is material, into writing, before he commits to prison or requires bail from the person so charged; and in every case of bailment is to certify the bailment in writing, and has authority to bind all persons by recognizance to appear to prosecute or give evidence against the party accused, in like manner as in cases of felony; and is to subscribe all examinations, informations, bailments, and recognizances, and to deliver or cause the same to be delivered to the proper officer of the court in which the trial is to be, before or at the opening of the court, in like manner as in cases of felony. 9 George IV. cap. 74, sect. 4.

Penalty on justice offending in any thing contrary to the intent and meaning of the above provisions.

3367. If any justice offends in any thing contrary to the true intent and meaning of these provisions, the court to whose officer any such examination, information, evidence, bailment, recognizance, or inquisition ought to have been delivered, is upon examination and proof of the offence in a summary manner to set such fine upon every such justice as the court thinks meet. 9 George IV. cap. 74, sect. 6.

Accessary before the fact may be tried as such, or as a substantive felon, by any court which has jurisdiction to try the principal felon, although the offence be committed on the seas or abroad.

3368. For the more effectual prosecution of accessaries before the fact to felony, it is enacted, that if any person counsels, procures, or commands any other person to commit any felony, whether the same be a felony at common law or by virtue of any statute or statutes made or to be made, the person so counselling, procuring, or commanding is to be deemed guilty of felony; and may be indicted and convicted either as an accessary before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon; or may be indicted and convicted of a substantive felony, whether the principal felon has or has not been previously convicted, or is or is not amenable to justice; and may be punished in the same manner as any accessary before the fact to the same felony if convicted as an accessary may be punished; and the offence of the person so counselling, procuring, or commanding, howsoever indicted, may be inquired of, tried, determined, and punished by any court which has jurisdiction to try the principal felon, in the same manner as if such offence had been committed at the same place as the principal felony, although such offence may have been committed either on the high seas, or at any place on land, whether within her Majesty's dominions or without: and in case the principal felony, and the offence of counselling, procuring, or commanding, have been committed in different places, the last-mentioned offence may be inquired of, tried, determined, and punished in any of her Majesty's courts of justice within the British territories under the government of the Company, having jurisdiction to try either of the said offences; provided always, that no person who has once been duly tried for any such offence, whether as an accessary before the fact or as for a substantive felony, is to be liable to be again indicted or tried for the same offence. 9 George IV. cap. 74, sect. 7.

If the offence be committed in different places, the accessary may be tried in any of the Queen's courts in India having jurisdiction.

Accessary after the fact may be tried by any court which has jurisdiction to try the principal felon.

3369. If any person becomes an accessary after the fact to any felony, whether the same be a felony at common law, or by virtue of any statute or statutes made or to be made, the offence of such person may be inquired of, tried, determined, and punished by any court which has jurisdiction to try the principal felon, in the same manner as if the act, by reason whereof such person has become an accessary, were committed at the same

place as the principal felony, although such act has been committed either on the high seas or at any place on land, whether within her Majesty's dominions or without; and in case the principal felony, and the act by reason whereof any person has become accessary, have been committed in different places, the offence of such accessary may be inquired of, tried, determined, and punished in any of her Majesty's courts of justice within the British territories under the government of the Company, having jurisdiction to try either of the said offences: provided always that no person who has once been duly tried for any offence of being an accessary is to be liable to be again indicted or tried for the same offence. 9 George IV. cap. 74, sect. 8.

If the offence be committed in different places, the accessary may be tried in any court having jurisdiction.

3370. If any principal offender is in any wise convicted of any felony, it is lawful to proceed against any accessary, either before or after the fact, in the same manner as if such principal felon had been attainted thereof, notwithstanding such principal felon should die or be pardoned, or otherwise delivered before attainder; and every such accessary is to suffer the same punishment, if he or she be in any wise convicted, as he should have suffered if the principal had been attainted. 9 George IV. cap. 74, sect. 9.

Accessary may be prosecuted after conviction of the principal, though the principal be not attainted.

3371. In any indictment or information for any felony or misdemeanor wherein it is requisite to state the ownership of any property whatsoever, whether real or personal, which belongs to or is in the possession of more than one person, whether such persons be partners in trade, joint tenants, parceners, or tenants in common, it is sufficient to name one of such persons, and to state such property to belong to the person so named, and another or others as the case may be; and whenever in any indictment or information for any felony or misdemeanor it is necessary to mention, for any purpose whatsoever, any partners, joint tenants, parceners, or tenants in common, it is sufficient to describe them in the manner aforesaid: and this provision is to be construed to extend to all joint-stock companies and trustees. 9 George IV. cap. 74, sect. 10.

In indictments for offences committed on the property of partners, it may be laid in any one partner by name, and others.

3372. If any person aids, abets, counsels, or procures the commission of any offence which is by this Act punishable on summary conviction, either for every time of its commission, or for the first and second time only, or for the first time only, every such person is, on conviction before a justice of the peace, to be liable for every first, second, or subsequent offence of aiding, abetting, counselling, or procuring, to the same forfeiture and punishment, to which a person guilty of a first, second, or subsequent offence as a principal offender is by this Act made liable. 9 George IV. cap. 74, sect. 39.

Aiders and abettors in offences punishable by justice on summary conviction.

3373. Any person found committing any offence punishable either upon indictment or upon summary conviction by virtue of this Act, may be immediately apprehended without a warrant by any peace-officer, or by the party aggrieved, or by his servant, or any person authorized by him, and forthwith taken before some neighbouring justice of the peace to be dealt with according to law: and if any credible witness proves upon oath before a justice of the peace a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever, on or with respect to which any such offence has been committed, the justice may grant a warrant to search for such property, as in the case of stolen goods: and any person to whom any property is offered to be sold, pawned, or delivered, if he has reasonable cause to suspect that any such offence

A person may be apprehended in the act of committing an offence.

A justice upon good grounds of suspicion may grant a search warrant.

A person to whom property suspected to be stolen, &c. is offer-

ed, may seize the party offering.

has been committed on or with respect to such property, is hereby authorized, and if in his power is required, to apprehend and forthwith to carry before a justice of the peace the party offering the same, together with such property, to be dealt with according to law. 9 George IV. cap. 74, sect. 40.

Summary proceedings are to be commenced within three months.

3374. The prosecution for every offence punishable on summary conviction under this Act is to be commenced within three calendar months after the commission of the offence, and not otherwise; and the evidence of the party aggrieved is to be admitted in proof of the offence. 9 George IV. cap. 74, sect. 41.

Mode of compelling the appearance of persons punishable on summary conviction.

3375. Where any person is charged on the oath of a credible witness, before any justice of the peace, with any such offence, the justice may summon the person charged to appear at a time and place to be named in such summons, and if he does not appear accordingly, then (upon proof of the due service of the summons upon such person, by delivering the same to him personally, or by leaving the same at his usual place of abode) the justice may either proceed to hear and determine the case *exparte*, or issue his warrant for apprehending such person, and bringing him before himself or some other justice of the peace: or the justice before whom the charge is made may (if he so think fit) without any previous summons (unless where otherwise specially directed) issue such warrant; and the justice before whom the person charged appears or is brought is to proceed to hear and determine the case. 9 George IV. cap. 74, sect. 42.

Application of forfeitures and penalties on summary convictions.

3376. Every sum of money which is forfeited for the value of any property stolen or taken, or for the amount of any injury done, (such value or amount to be assessed in such case by the convicting justice) is to be paid to the party aggrieved, if known, except where such party has been examined in proof of the offence; or when the party aggrieved is unknown, such sum is to be applied in the same manner as the penalty: provided always, that where several persons join in the commission of the same offence, and are, upon conviction thereof, each adjudged to forfeit a sum equivalent to the value of the property or to the amount of the injury, in every such case no further sum is to be paid to the party aggrieved than that which is forfeited by one of such offenders only, and the corresponding sum or sums forfeited by the other offender or offenders are to be applied in the same manner as any penalty imposed by a justice of the peace is herein directed to be applied. 9 George IV. cap. 74, sect. 43.

Proviso if more than one is adjudged to forfeit the value of the injury.

If a person summarily convicted does not pay, &c. the justice may commit him.

3377. In every case of a summary conviction under this Act, where the sum which is forfeited for the value of the property stolen or taken, or for the amount of the injury done, or which is imposed as a penalty by the justice, is not paid either immediately after the conviction or within such period as the justice at the time of the conviction appoints, it is lawful for the convicting justice (unless where otherwise specially directed) to commit the offender to the common jail or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the justice, for any term not exceeding two calendar months, where the amount of the sum forfeited or of the penalty imposed, or of both (as the case may be) together with the costs, does not exceed fifty sicca rupees; and for any term not exceeding four calendar months, where the amount with costs does not exceed one hundred sicca rupees; and for any term not exceeding

Scale of imprisonment.

six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid upon payment of the amount, with costs. 9 George IV. cap. 74, sect. 44.

The justice may discharge the party from his conviction in certain cases.

3378. Provided always that where any person is summarily convicted before a justice of the peace of any offence against this Act, and it is a first conviction, it is lawful for the justice, if he so think fit, to discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved, for damages and costs, or either of them, as is ascertained by the justice. 9 George IV. cap. 74, sect. 45.

A summary conviction is a bar to any other proceeding for the same cause.

3379. In case any person convicted of any offence punishable upon summary conviction by virtue of this Act has paid the sum adjudged to be paid, together with costs under such conviction, or has suffered the imprisonment awarded for non-payment thereof, or the imprisonment adjudged in the first instance, or has been discharged from his conviction in the manner aforesaid, in every such case he is to be released from all further or other proceedings for the same cause. 9 George IV. cap. 74, sect. 46.

Form of conviction.

3380. The justice before whom any person is convicted of any offence against this Act may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case may require; *videlicet*,

"Be it remembered, that on the day of in the year of "our Lord at [*as the case may be*] *A. O.* is convicted "before me *I. P.*, magistrate of , and one of Her Majesty's justices of the peace, for "that he the said *A. O.* did [*specify the offence, and the time and place when and where the "same was committed, as the case may be, and on a second conviction state the first conviction,*] "and I the said *I. P.* adjudge the said *A. O.* for the said offence to be imprisoned in the " [*or* to be imprisoned in the and there kept to hard "labour] for the space of ; *or*, I adjudge the said *A. O.* for his said offence "to forfeit and pay [*here state the penalty actually imposed, or "state the penalty, and also the value of the articles stolen, or the amount of the injury, and "as the case may be,*] and also to pay the sum of for costs; and in "default of immediate payment of the said sums to be imprisoned in the " [*or* to be imprisoned in the and there "kept to hard labour] for the space of unless the said sums shall "be sooner paid; [*or*, and I order that the said sums shall be paid by the said *A. O.* "on or before the day of ;] and I direct that the said "sum of [i. e. *the penalty only*] shall be paid to " of aforesaid, in which the said offence was committed, "to be by him applied according to the directions of the statute in that case made and "provided; [*or* that the said sum of i. e. *the penalty*, shall be paid to, "*&c. as before,*] and that the said sum of [i. e. *the value of the articles, "stolen, or the amount of the injury done,*] shall be paid to *C. D.* [*the party aggrieved, "unless he has been examined in proof of the offence, in which case state that fact, and dis-"pose of the whole like the penalty, as before.*] Given under my hand and seal, the day and "year first above-mentioned."

9 George IV. cap. 74, sect. 47.

Convictions to be returned to the sessions.

How far they are to be evidence in future cases.

3381. Every justice of the peace before whom any person is convicted of any offence against this Act is to transmit the conviction to the next court of general or quarter sessions, there to be kept by the proper officer among the records of the court; and upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, is to be sufficient evidence to prove conviction for the former offence, and the conviction is to be presumed to have been unappealed against until the contrary be shown. 9 George IV. cap. 74, sect. 50.

Having in possession more than five pieces of counterfeit coin, without lawful excuse, punishable with fine or three months' imprisonment.

3382. If any person has in his custody, without lawful excuse, the proof whereof should lie on the party accused, any greater number of pieces than five pieces of any false or counterfeit gold or silver coin of any of the territories under the governments of the Company, or usually current and received as money in payment in any part of the British territories under the government of the Company, every such person, being thereof convicted upon the oath of one or more credible witness or witnesses before one of Her Majesty's justices of the peace, is to forfeit and lose all such false and counterfeit coin; which are to be cut in pieces and destroyed by order of such justice: and is for every offence to forfeit and pay any sum of money not exceeding in value forty sicca rupees, or less than twenty sicca rupees, in the currency of the place in which such offence is committed, for every such piece of false or counterfeit coin which is found in the custody of such person, one moiety to the informer or informers, and the other moiety to the poor of the presidency, settlement, or place in which such offence is committed; and in case any such penalty is not forthwith paid, it is lawful for such justice to commit the person or persons who are adjudged to pay the same to the common jail or house of correction, there to be kept to hard labour for the space of three calendar months, or until such penalty shall be paid. 9 George IV. cap. 74, sect. 75.

Persons in possession of shipwrecked goods not giving a satisfactory account.

3383. If any goods, merchandize, or articles of any kind, belonging to any ship or vessel in distress, or wrecked, stranded, or cast on shore, are by virtue of a search warrant, to be granted as hereinafter mentioned, found in the possession of any person, or on the premises of any person with his knowledge, and such person, being carried before a justice of the peace, does not satisfy the justice that he came lawfully by the same, then the same is by order of the justice to be forthwith delivered over to or for the use of the rightful owner thereof; and the offender, on the conviction of such offence before the justice, is to forfeit and pay, over and above the value of the goods, merchandize, or articles, such sum of money, not exceeding two hundred sicca rupees, as to the justice seems meet. 9 George IV. cap. 74, sect. 91.

Shipwrecked goods offered for sale may be seized.

3384. If any person offers or exposes for sale any goods, merchandize, or articles whatsoever, which have been unlawfully taken, or reasonably suspected so to have been, from any ship or vessel in distress, or wrecked, stranded, or cast on shore, in every such case any person to whom the same is offered for sale, or any officer of the customs or excise, or peace officer, may lawfully seize the same, and is with all convenient speed to carry the same, or to give notice of such seizure, to some justice of the peace; and if the person who has offered or exposed the same for sale, being duly summoned by such justice,

does not appear and satisfy the justice that he came lawfully by such goods, merchandize, or articles, then the same are by order of the justice to be forthwith delivered over to or for the use of the rightful owner thereof, upon payment of a reasonable reward (to be ascertained by the justice) to the person who seized the same; and the offender, on conviction of such offence by the justice is to forfeit and pay, over and above the value of the goods, merchandize, or articles, such sum of money, not exceeding two hundred sicca rupees, as to the justice seems meet. 9 George IV. cap. 74, sect. 92.

Stealing dogs, or beasts, or birds, kept in confinement.

3385. If any person steals any dog, or steals any beast or bird, ordinarily kept in a state of confinement, not being the subject of larceny at common law, every such offender, being convicted thereof before a justice of the peace, is for the first offence to forfeit and pay, over and above the value of the dog, beast, or bird, such sum of money, not exceeding two hundred sicca rupees, as to the justice seems meet; and if any person so convicted is afterwards guilty of any of the said offences, and is convicted thereof in like manner, every such offender is to be committed to the common gaol or house of correction, there to be kept to hard labour for such term, not exceeding twelve calendar months, as the convicting justice thinks fit; and on such subsequent conviction the justice may further order the offender, if a male, to be once or twice publicly or privately whipped, after the expiration of four days from the time of such conviction. 9 George IV. cap. 74, sect. 97.

Receivers of property where the original offence is punishable summarily, are punishable as original offenders.

3386. Where the stealing or taking of any property whatsoever is by this Act punishable on summary conviction, either for every offence, or for the first and second offence only, or for the first offence only, any person who receives any such property, knowing the same to be unlawfully come by, is on conviction thereof before a justice of the peace to be liable, for every first, second, or subsequent offence of receiving, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence of stealing or taking such property is by this Act made liable. 9 George IV. cap. 74, sect. 113.

Breaking down the dam of a fishery, &c.

3387. If any person unlawfully and maliciously breaks down or otherwise destroys the dam of any fish-pond, or of any water which is private property, or in which there is any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish; or unlawfully and maliciously puts any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish therein; every such offender, being convicted thereof before a justice of the peace, is to forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding fifty sicca rupees, as to the justice seems meet. 9 George IV. cap. 74, sect. 121.

Malice against the owner of the property not essential to the offence.

3388. Every punishment and forfeiture by this Act imposed on any person maliciously committing any offence, whether the same be punishable upon indictment or upon summary conviction, is equally to apply and to be enforced, whether the offence is committed from malice conceived against the owner of the property in respect of which it is committed, or otherwise. 9 George IV. cap. 74, sect. 124.

Stealing the whole or part of any growing tree, &c., or of

3389. If any person steals the whole or any part of any growing tree, sapling or shrub, or any underwood, or of any pale, post, or stile, or any growing cultivated plant,

any pale, post, or stile, or any growing cultivated plant, &c.; or maliciously injuring any real or personal property.

root, fruit, or vegetable production, or unlawfully and maliciously commits any damage, injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, every such offender being convicted before a magistrate or justice of the peace is for the first offence to forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding fifty rupees as to the magistrate or justice of the peace seems meet; and if any person so convicted is afterwards guilty of any of the said offences, and is convicted thereof in like manner, every such offender is, for such second offence, to be imprisoned with or without hard labor, for such term not exceeding six calendar months as the convicting magistrate or justice of the peace thinks fit. Act XXXI. 1838, sect. 29.

Application of forfeiture for such offence.

In case of the non-payment of any forfeiture or penalty for such offence, the magistrate or justice may award a term of imprisonment.

3390. Every sum of money which is forfeited for the amount of any injury done (such amount in each case to be assessed by the convicting magistrate or justice of the peace) is to be paid to the party aggrieved, if known, except when such party has been examined in proof of the offence; and in every case of a summary conviction under this Act when the sum which is forfeited for the amount of the injury done, or which is imposed as a penalty by the magistrate or justice of the peace, is not paid, either immediately after the conviction or within such period as the magistrate or justice of the peace at the time of conviction appoints, it is lawful for the convicting magistrate or justice of the peace to commit the offender to the common jail or house of correction to be imprisoned only, or to be imprisoned with hard labor according to the discretion of the magistrate or justice of the peace, for any term not exceeding two calendar months, where the amount of the sum forfeited, or of the penalty imposed, or of both (as the case may be) together with the costs does not exceed fifty rupees; and for any term not exceeding four calendar months, when the amount with costs does not exceed one hundred rupees; and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid upon payment of the amount and costs. Act XXXI. 1838, sect. 30.

If the forfeiture is realized from several, the amount forfeited by one only is to be paid to the party aggrieved.

3391. Provided always that where several persons join in the commission of the same offence, and are, upon conviction thereof, each adjudged to forfeit a sum equivalent to the amount of the injury done, in every such case no further sum is to be paid to the party aggrieved than that which is forfeited by one of such offenders only. Act XXXI. 1838, sect. 31.

Summary conviction for such offence is a bar to any other proceeding for the same cause.

3392. In case any person convicted of any offence punishable upon summary conviction by virtue of this Act has paid the sum adjudged to be paid together with costs under such conviction, or has suffered the imprisonment awarded for non-payment thereof, every such person is to be released from all further or other proceedings for the same cause. Act XXXI. 1838, sect. 32.

Malice against the owner of the property not essential to the offence.

3393. Every punishment and forfeiture by this Act imposed on any person maliciously committing any offence is equally to apply and to be enforced whether the offence has been committed from malice conceived against the owner of the property in respect of which it is committed or otherwise. Act XXXI. 1838, sect. 33.

3394. It is not necessary in any proceeding either for theft or for malicious injury, spoil, or damage, to or upon any property dedicated to public use or ornament, to allege the same to be the property of any person. Act XXXI. 1838, sect. 34.

Ownership of such property, if for the use of the public.

3395. An appeal lies from all sentences passed by any justice of the peace acting without the local limits of any of her Majesty's supreme courts upon convictions had before him for any offence, and from all sentences passed by any magistrate upon convictions had before him exercising jurisdiction under the provisions of statute 53 George III. cap. 155, to the same authority and subject to the same rules as are provided by the regulations and Acts of the government in the case of sentences passed by magistrates in the exercise of their ordinary jurisdiction. And cases so made the subject of appeal are not afterwards liable to revision by means of a writ of certiorari. Act IV. 1843, sect. 1.

Appeals from sentences of justice of peace or magistrate under the above rules lie to the session judge, as in ordinary cases.

3396. Nothing in this Act contained is to be held to take away the power of quashing any conviction by means of a writ of certiorari, in any other case than where there has been such appeal as aforesaid. Act IV. 1843, sect. 2.

If such appeal is not preferred, a writ of certiorari may be obtained.

3397. All convictions, judgments, orders, and other proceedings, which are had, made, or pronounced by or before any justice of the peace within any of the British settlements or territories in India, out of the court of oyer and terminer within and for the same, are and may be removable by writ of certiorari into the court of oyer and terminer and jail delivery of and for the same presidency, at the instance of any of the parties thereby affected or aggrieved, at any time within the space of six calendar months next after the making or pronouncing thereof respectively; and for that purpose it is and may be lawful to and for any one or more of the justices of the said court of oyer and terminer and jail delivery, and such justice or justices is and are hereby required, at the instance of such party or parties, to grant his fiat or warrant to the keeper of the rolls of the peace, or other proper officer, to award a writ of certiorari under the seal of the supreme court of judicature for the removal and bringing of such conviction, judgment, order, or other proceeding into the said court of oyer and terminer and jail delivery; and the said court of oyer and terminer and jail delivery has full power and authority to hear and determine the matter of such conviction, judgment, order, and other proceeding so removed, and to quash or affirm the same, so that the same be not quashed for want of form, but on the merits only, and to pronounce judgment thereon, in the like manner as the court of Queen's Bench at Westminster can or may do upon convictions, judgments, orders, or other proceedings had or made by or before any justices of the peace, or court of quarter-sessions in England removed or brought into the said court of Queen's Bench by writ of certiorari. 33 George III. cap. 52, sect. 153.

Proceedings of justices of the peace how to be removed into the supreme court by writ of certiorari.

3398. Before the granting of any such writ the like recognizances are to be entered into, and the party or parties applying for such writ are to be put under the same terms and conditions, in all respects, as are by law directed and provided in the cases of writs of certiorari awarded or granted for the removal of any conviction, judgment, order, or other proceeding, had or made by or before any justice or justices of the peace in England into the said court of Queen's Bench, or as by the usage and practice of the same court hath been accustomed. 33 George III. cap. 52, sect. 154.

On what conditions writs of certiorari are to be granted.

CHAPTER II.

OF HUSBAND, WIFE, AND CHILDREN.

Persons neglecting to support their wives and families, are to be required to do so by the magistrate; or in failure thereof are liable to imprisonment.

3399. Any person amenable to the jurisdiction of the zillah and city courts, who possesses the means of supporting his wife and children, and notwithstanding deserts them and wilfully neglects to provide for their support, on proof thereof to the satisfaction of the magistrate, or joint magistrate, of the zillah in which the party so deserting and neglecting his family resides, is to be required to provide for the maintenance of his family in a suitable manner, according to his situation and circumstances in life; and on his failing so to do, is to be considered guilty of a misdemeanor, and is liable to imprisonment for a period not exceeding one month. He is also liable to a repetition of the sentence upon any subsequent conviction of a similar misdemeanor, after having been required to provide for the support of his family. Provided, however, that nothing in this section is to render a husband liable to punishment for not maintaining his wife, if it be clearly shown, that the latter has forfeited all just claim to support from her husband, by living in adultery with another person, or by other acts implying wilful abandonment of his protection.(a) Reg. VII. 1819, sect. 3.

This does not apply to the case of a wife abandoning her husband's protection.

This may be applied to illegitimate children; and to their mothers.

3400. The above section is to be held applicable to illegitimate, as well as to legitimate children; and may also be applied, at the discretion of the magistrate, to secure a proper maintenance for the mothers of illegitimate offspring, whilst in a state of pregnancy, or having the care of an infant child. Reg. VII. 1819, sect. 4.

Rule regarding the evidence of the mother of an illegitimate child *quoad* the alleged father.

3401. The evidence of the mother of an illegitimate child, against the alleged father, is primâ facie good as far as it goes; but should be sifted and weighed as any other testimony, and tested, as far as practicable, by any circumstantial evidence that may offer. The result must then depend on the belief or otherwise reposed in it by the magistrate. Const. No. 1163.

The husband cannot be required to furnish security.

3402. Where the wife alleged that her husband was about to leave the country, it was held that the magistrate could not require security from him to maintain her. He should require the husband to enter into an engagement in writing to provide for his wife; and should punish any, and every, subsequent breach of such engagement distinctly complained of and proved, as a misdemeanor, by imprisonment. Const. No. 992.

Power of assistants in such cases.

3403. Cases under the above provisions may be referred to principal sudder ameens [and, *semble*, to other officers exercising the primary powers of an assistant] for investigation and report. If such officers are vested with special powers they are competent to dispose of such cases. Const. No. 1265. C. O. No. 6, May 21, 1847.

Not applicable to European British subjects.

3404. The provisions of sect. 4, Reg. VII. 1819 [and therefore of sect. 3 also] are not applicable to European British subjects as defendants. Const. No, 1141.

(a) This is strictly in accordance with Mahomedan law: according to which the amount of subsistence is to vary according to any change which may occur in the circumstances of the husband. *Hed. Trans. vol.* 1, *page* 392.

The magistrate cannot interfere to restore a wife to her husband; or a betrothed woman.

3405. The magistrates are invested with no authority to interfere with a view to restore a wife to her husband; applications of such a nature should be preferred in the civil court in the form of a regular suit. So, a magistrate was considered to have acted properly in refusing to interpose his authority to compel the delivery of a betrothed woman to a petitioner. And in a case of this nature, in which a magistrate had interfered, his order was rescinded, and the nizamut adawlut held, as a general rule, that all suits, or complaints, relative to marriage should be heard in the civil courts. C. O. No. 19 of vol. 3. Const. Nos. 148 and 725.

Competency of magistrate to interfere in cases which involve the right of parents and others to the guardianship of children.

3406. Where a man of the Christian religion refused to resign the guardianship of a female child, aged two years, to its Hindoo mother, with whom he had cohabited, but whom he had since dismissed with a maintenance of four rupees a month and a house for life; and she applied to the magistrate to obtain possession of the child for her; the nizamut adawlut held that he had no authority to interfere, and that the petitioner should be referred to the civil court. But more lately, where a magistrate referred the following questions for decision; viz.—1. Is any power vested in a magistrate under the regulations to compel a wife who has abandoned the society of her husband, or who has been abandoned by her husband, to restore to the husband the children begotten during the course of the marriage?—2. Is any power vested in a magistrate to compel a party, who, in the assumed character of guardian, next of kin, and the like, may have enticed away or carried off any infants from another party (under whose charge or in whose possession they were), to restore the infants to the prosecutor or into the court of the magistrate, that the magistrate may decide to whom the charge of the infants legally belongs?—and the sudder courts differed in opinion; the government on a reference did not concur in the opinion that a magistrate is not competent to exercise any interference; but, considering that in the decision of every case regard should be had to its particular circumstances, held that, until some definite rules should be prescribed for the guidance of the magistrate in these cases, the safest course would be to refrain from attempting to issue any general instructions, and to leave the several magistrates to exercise a sound discretion in exerting their official authority or not, according as the propriety of one or the other course might be indicated by the circumstances of each case. Const. No. 1060. C. O. No. 239 of vol. 2.

Clandestine marriage of a female ward.

3407. Where a person clandestinely married a female ward (also a minor) placed under a guardian appointed by the sudder dewanny adawlut under Reg. I. 1800, without the consent of such guardian, and in opposition to the express orders of the civil court, it was held that no offence had been committed under the Mahomedan law, and that the offence was therefore not cognizable in the criminal court. Const. No. 637.

Magistrates and judges to point out to parents and others the danger of allowing children to go abroad with jewels and ornaments.

3408. Magistrates and session judges are to take every proper occasion, especially when the case of a child's being murdered to obtain its jewels or ornaments comes officially before them, to impress upon the minds of parents, and other persons present in court, the danger to which children are exposed by the practice of allowing them to go abroad with jewels and ornaments, unless attended by persons able to protect them, and the consequent imprudence and impropriety of their perseverance in a practice so often attended with effects as lamentable to themselves as fatal to the lives of their children.(a) C. O. No. 195 of vol. 1.

(a) The following proclamation was ordered to be published at all the public cutcheries, and police thanas: the necessity of such a proclamation will be evident on a reference to the nature and number of cases quoted in

CHAPTER III.

OF MASTERS AND SERVANTS, WORKMEN, AND CONTRACTS OF LABOR.

Workmen engaging to serve for a stipulated term, or contracting for the performance of a specific work, and wilfully quitting the service or neglecting to perform the work, — how punishable.

3409. All persons who voluntarily engage to serve as workmen of any description for a stipulated term, or who voluntarily contract for the performance of any specific work, and who, without good and sufficient cause, wilfully quit the service so engaged for before the expiration of the term agreed upon, or wilfully neglect to perform the work so contracted for, are to be deemed guilty of a misdemeanor; and on conviction before a magistrate, or joint magistrate, are liable to a sentence of imprisonment not exceeding one month. The magistrate or joint magistrate may likewise require the persons so convicted to complete their stipulated term of service, or to perform the work contracted for, if it appears just and proper to require the same; and any subsequent conviction of wilful neglect to comply with such requisition, is punishable by a further sentence of imprisonment not exceeding two months. Reg. VII. 1819, sect. 5.

So, domestic servants engaging for a fixed term, or a specific service, or employed from month to month.

3410. The provisions of the foregoing section are also declared applicable to domestic servants, who engage to serve for any fixed term; or during the performance of any specific service; or, though no such engagement has been entered into, are employed from month to month; and without good and sufficient cause wilfully quit the service of their

para. 2928.—"It having come to the knowledge of government through various channels of information, and particularly from the reports of the zillah and city magistrates, the courts of circuit, and superintendents of police, that frequent instances still occur in many parts of the territory subject to this presidency, especially in the western provinces, of the murder of children for the purpose of obtaining their gold and silver ornaments; and the Honorable the Vice-President in council, being desirous of preventing as far as possible this atrocious and lamentable crime, so distressful to the parents and other relatives of the numerous children thus murdered from year to year, without having recourse to measures of a prohibitory and penal nature, which might interfere with established usages, and occasion loss of property or personal inconvenience; it is hereby notified by the court of nizamut adawlut, with the sanction of government, to all parents, guardians, and others, having the charge of young children whether of the Hindoo or Mussulman religion, that whereas experience has shewn the great danger of robbery and murder to which children are exposed by being allowed to go abroad from the house of their parents or other persons, having the care of them, with gold or silver ornaments, especially when not attended by trustworthy persons capable of protecting them, it is the obvious duty of all parents and others intrusted with the care of children, to guard against such danger by removing the cause of temptation, and by not permitting any child under their charge to go from home with any gold or silver ornament, except in company with themselves or with other persons on whom they can depend, to guard against the possibility of any calamitous consequence which, they must be well aware, has too often ensued from a neglect of such precaution. The judges of circuit and the zillah and city magistrates have been further instructed to take every proper occasion of impressing upon the minds of parents and other persons, who may be present at criminal trials in cases of child-murder, the danger to which children are exposed by the imprudent practice of allowing them to go abroad with jewels and ornaments; and it is hoped, that the respectable inhabitants of the country, as well from feelings of natural affection, as from a sense of moral duty, will be induced to shew a strict and ready attention to such communications, as well as to the admonition contained in this notification, which can have no other object than to preserve the lives of many helpless children, and to prevent the distress of their relations from the loss of them. All parents and others having the care of children are accordingly hereby expected and enjoined to maintain by their example and influence, a careful observance of the precaution recommended to them in this proclamation, which it may be confidently expected will effectually check the prevalent crime adverted to, and thereby preclude the necessity of adopting any other remedy."

employers before the expiration of the fixed term; or before the completion of the stipulated service; or, with respect to monthly servants, before giving previous notice for a period not less than fifteen days. Reg. VII. 1819, sect. 6, cl. 1.

Beyond the prescribed punishment, the magistrate can take no measure to compel the performance of the work engaged for.

3411. The sentence of two months' imprisonment prescribed above, in cases of workmen neglecting to finish their work, is intended as a punishment for wilful neglect to perform work undertaken, and not as a means of compelling the performance of it; and consequently the magistrate is not competent to repeat the punishment of two months' imprisonment, or to take any further measure towards compelling an actual performance of the work engaged for. Const. No. 384.

There must be a stipulated term, or a contract for a specific work.

Venue.

3412. There must be a stipulated term of service, or a contract for the performance of a specific work, to render the above provision applicable to the case of mistrees, moochees, or other artisans, who have taken advances from their employers and agreed to work for the same. Such cases may be prosecuted either in the district in which the agreement was executed, or in that in which the defendant resides. Const. No. 1329.

This does not apply to a mokhtar;

3413. The above provisions were never intended to have, nor have, any reference to the wages of a mokhtar; they apply to workmen and domestic servants only. Const. No. 770.

nor to a gomashtah superintending an out-factory.

3414. The gomashtah of an indigo planter, superintending an out-factory, cannot be considered as a domestic servant, or as a workman. The above provisions therefore are not applicable to such a case.(a) Const. No. 924.

Nor is it applicable to contracts for the supply of hackeries and bullocks.

3415. The above provisions are not applicable to the enforcement of contracts for furnishing hackeries and bullocks under engagements to indigo planters; but they may be applied in the case of the driver of a hackery and cattle, his own property, who engages therewith to perform certain work, and wilfully neglects or refuses to fulfil his engagement. C. O. Nos. 186 and 197 of vol. 2.

Beoparees in the service of government suing for arrears of wages, to be referred to civil court

3416. The complaints of beoparees for the adjustment of their claims for the hire of their hackeries and bullocks, while in the service of government, are not cognizable by the magistrate, but should be preferred in the civil court. Const. No. 560.

A contract with security to convey goods to a certain place cannot be enforced under these provisions.

3417. Where A entered into a contract with B, on the security of C and D, for furnishing a boat to convey certain goods of A to a fixed place, and afterwards B unloaded the goods, and refused to carry them on according to his agreement; it was held, that, as the contract was of a purely civil nature, and as security was taken for the performance of it, the above provisions did not apply; and that the person aggrieved must seek his remedy in the civil court. Const. No. 1085.

Rule to control the discharge of servants in certain cases.

3418. In like manner no master, or other person, employing a servant for a fixed term, or for a specific service, or from month to month, is at liberty, without good and sufficient cause, to discharge such servant, against his will, before the expiration of the fixed term; or the completion of the specified service; or, with respect to servants employed from month to month, without giving previous warning of the intended dis-

(a) It was held at the same time that the provisions of sect. 20, Reg. VII. 1799 (which refer to native agents employed by landholders and farmers in the management of their estates or farms, or collection of their rents) are equally inapplicable to the gomashtahs and mohurrirs of indigo-planters.

charge for a period of at least fifteen days, or paying his wages for that period. Reg. VII. 1819, sect. 6, cl. 2.

What award the magistrate is to make in such cases.

3419. It is the duty of the magistrates and joint magistrates, on applications made to them upon the prescribed stampt paper, to enforce the provisions of the above clause by causing payment to be made to any servant, who is discharged in opposition thereto, of a sum equal to half a month's wages, in addition to any arrear of wages which is due to him at the time of his discharge; or if the servant has been engaged for a fixed term, or for a specific service, by causing payment to be made to him of such sum as appears fully adequate to any loss sustained by him from being discharged before the time agreed upon. Reg. VII. 1819, sect. 6, cl. 3.

Proviso in case of misconduct of servant; and where the servant or workman is ill-treated, or has other sufficient cause for leaving the service.

3420. Provided however, that no servant is to be entitled to recover more than his arrear of wages, when he is discharged for any misconduct proved to the satisfaction of the magistrate or joint magistrate, and appearing sufficient to warrant his discharge. Nor is any workman or servant to be liable to punishment under the provisions of this regulation, when it is proved to the satisfaction of the magistrate or joint magistrate, that his quitting the service of his employer, without previous notice, or before the expiration of a stipulated term, or without having completed the performance of any work contracted for, was occasioned by gross mal-treatment, or by non-payment of wages due, or by any other cause which appears to the magistrate or joint magistrate sufficient to justify or excuse the act complained of. Reg. VII. 1819, sect. 6, cl. 4.

Complaints for arrears of wages must be made within a year; and preferred on oath.

3421. The intention of the above provisions evidently is, that the complaint for the recovery of wages should be made immediately on the occurrence of the cause of complaint; *i. e.* within the period of one year; a case therefore in which nearly two years and a half had elapsed, was considered not properly cognizable by the magistrate. Such complaints, like all other complaints in a criminal court, must be preferred on oath. Const. No. 582.

Any amount of wages not exceeding arrears for one year may be recovered.

3422. The sum which may be recovered in the criminal court as wages, is not limited by the above provisions: and, under the last quoted construction, the servant may sue in the criminal court to recover wages for any period not exceeding one year. Const. No. 913.

Award how to be enforced.

3423. In the event of parties, against whom an award for arrears of wages to domestics passed under the above provisions is given, not immediately paying the same, the magistrate should proceed to levy the amount by the distress and sale of the defendant's personal property. Const. No. 1053.

Powers of assistants in such cases.

3424. Assistants vested with special powers are competent to dispose of cases under the above provisions: and such cases may be referred to principal sudder ameens [and, *semble*, to other officers exercising the primary powers of an assistant] for investigation and report. C. O. No. 6, May 21, 1847. Const. No. 1265.

Cases decided by the criminal authorities under these provisions are not open to a civil action; nor can the civil court interfere with the magistrate's order.

3425. In all cases in which it has been the intention of the legislature to render a summary decision subsidiary to a suit in the civil court, the regulations contain specific provision to that effect; as for instance in cases coming under the provisions of Reg. XV. 1824. No such provision is however made as regards cases of the nature of those specified in sect. 6, Reg. VII. 1819; and therefore cases decided by the criminal authorities

under the rules laid down in that section are not open to a civil action. The civil court of course can have no power to issue an injunction to a magistrate for the purpose of stopping execution of his order. Const. No. 1158.

How far these provisions are applicable to European British subjects.

3426. The rule contained in cl. 3, sect. 6, Reg. VII. 1819, cannot be considered applicable to European British subjects; and consequently a magistrate, even though a justice of the peace, cannot compel such person to pay the wages of a servant.(a) Yet the magistrate may, at the suit of an European British subject, proceed against native servants or workmen quitting their employment, &c. Const. Nos. 340 and 345.

CHAPTER IV.

OF INSANE PERSONS.

Police officers how to proceed in regard to persons dangerously insane.

3427. The police darogahs are to secure and send to the sudder station of the district, in which their thanas are situated, all insane persons found within the limits of their respective jurisdictions, from whose insanity there may be reason to apprehend any fatal or serious consequences, unless the friends of such persons agree to enter into engagements to adopt such precautions as shall prevent their doing mischief. In such case, the police officer to whom the engagements are tendered, is to refrain from securing the person of the insane individual, and to await the instructions of the magistrate, to whom the circumstances of the case are to be reported without delay. Reg. XX. 1817, sect. 30, cl. 6.

Magistrate how to dispose of such persons when sent to the sudder station.

3428. Such persons, when sent to the sudder station, are to be confined, with proper attendance, in a separate ward of the jail; but they should, in general, be removed to the hospital of the local division as soon as circumstances may admit. The magistrates have, however, a discretion to detain under their charge any individuals confined on account of insanity, whose removal to the division hospital appears to them objectionable; but in such case the reason of the detention is to be reported to the session judge. When an insane person sent to the hospital has been attended by the medical officer attached to the zillah station, the latter is to furnish, in duplicate, a statement of the history and progress of his derangement, for the information and guidance of the surgeon in charge of the hospital. C. O. No. 165 of vol. 1; and No. 82 of vol. 2.

When a person is acquitted on the ground of insanity after trial on a charge of murder, the parties taking charge of him are to execute an engagement in a specific penal sum.

3429. On the occasion of delivering over to the care of their relations or friends individuals who have been acquitted by the nizamut adawlut, upon the ground of insanity, after trial on a charge of murder, if no specific penalty is mentioned in the bond, which the parties receiving charge of the liberated individuals are required to execute for the prevention of further mischief, it is to be apprehended that, from the undefined nature of the responsibility, engagements may be executed without due consideration, to the mani-

(a) But the magistrate, whether he is a justice of the peace or not, may take cognizance of such complaints against European British subjects, under the provisions of 53 George III. cap. 155, sect. 106. *See para.* 3359.

fest danger of the community: in such cases therefore the magistrates are to require the parties taking charge of the person released to execute an engagement in a specific penal sum, suited to their rank and condition in life, to be forfeited in the event of their not taking such care of the individual committed to their charge, as may prevent his doing further mischief. Forms of sentence and of engagement of security (with translations), prescribed for adoption in cases of persons convicted of having committed any penal act while in a state of insanity, are given in appendix C, Nos. 31 and 32. C. O. No. 325 of vol. 1; and Nos. 61 and 62 of vol. 3.

Forms of sentence and of engagement, when persons are convicted of committing any crime whilst insane.

Magistrate how to proceed towards an European British subject reported to be insane;

3430. Whenever it comes to the knowledge of a magistrate that an European British subject, wandering about and at large within his jurisdiction, is deemed to be insane, it is competent to him to direct the transmission of such person, in custody of a proper guard, but with due precautions against needlessly harsh or severe treatment, to the sudder station, and to cause him to be carefully examined by the civil surgeon; and if on such examination, coupled with other proof, the magistrate is satisfied that such British subject is so far disordered in his senses that it is dangerous for him to be permitted to go abroad, he is to send him under a proper guard,(a) and with his warrant under his seal and signature, accompanied with a certificate under the signature of the civil surgeon, to the insane asylum at the presidency; securing, at the same time, the lunatic's property (should he have any) and intimating his state in writing to any relations and friends he may be known to have in India. This rule is not to be understood to extend to prevent any such relation or friend that may be forthcoming from taking such lunatic with his property under his own care and protection. C. O. No. 85 of vol. 3, para. 1.

to secure his property and to inform his friends.

But any relation or friend may take charge of such lunatic.

Magistrate how to dispose of such lunatic's property.

2431. The magistrate is authorized to attach and sell by auction any personal property such declared lunatic may possess, with a view to the proceeds being applied to the payment of necessary charges of removal, maintenance, clothing, medicine, and care of such lunatic; and he is to keep an account of what expenditure he may himself incur on this head in his own office, and to remit so much of the amount as may be needed to meet the above charges elsewhere. C. O. No. 85 of vol. 3, para. 2.

If sufficient property is not forthcoming, magistrate may defray the necessary expenses.

3432. Whenever there is not sufficient property, or no property at all forthcoming, and no relations or friends of the insane person are discoverable to take charge of him, the magistrate is authorized himself to disburse the necessary expenses for the removal of the lunatic to the asylum and his subsistence in transit, and to charge the amount to government in a contingent bill, to be submitted with the countersignature of the session judge or commissioner. C. O. No. 85 of vol. 3, para. 3.

Magistrate to report each occasion of his acting under these rules.

3433. The magistrate is to report each occasion of his acting under the above rules to the secretary to government, soliciting special instructions with reference to any peculiar circumstances that may arise. C. O. No. 85 of vol. 3, para. 4.

Descriptive roll to be sent with lunatics, to the insane hospital.

3434. When any insane persons, European British subjects or others, are sent to any of the insane hospitals or to the asylum at the presidency, a descriptive roll, in the form No. 28 of appendix C, is to be forwarded with each patient, with the column of remarks filled up by the surgeon of the district. C. O. No. 104 of vol. 3.

(a) The western court's circular ran thus: "and with a certificate under his seal and signature, to what may be judged the most convenient place for his reception and confinement, which, in most instances, will probably be the insane asylum at the presidency," &c.

CHAPTER V.

OF COVENANTED OFFICERS.

3435. The whole of the officers of government, employed in the judicial department, civil or criminal, are prohibited, under pain of dismissal from office, from employing directly or indirectly, their private servants of whatever description, or any other persons, not being public officers duly appointed or nominated in conformity with the rules in force relative to such appointments, in the discharge of any part of their public duties, or in the execution of any public duty, in which the person so employed has not been duly authorized to act.* Reg. VIII. 1825, sect. 2, cl. 1.

Officers are prohibited from employing their private servants in the execution of any public duty;

* *This does not apply to copies made for the use of private individuals. See para.* 1369.

3436. The whole of the judicial officers are, in like manner and under the same penalty, prohibited from employing any of the public officers on their establishments (not being peons, or other inferior servants, in personal attendance upon a judge, magistrate, or other officer of government in the judicial department) in the performance of any part of their private business, or in the execution of any private trust relating to their personal concerns. Reg. VIII. 1825, sect. 2, cl. 2.

and from employing public officers (not being peons) in the execution of their private business.

3437. The session judges, and magistrates, and their assistants, or other officers being covenanted servants of the Company, are prohibited from lending money, directly or indirectly, to any proprietor or farmer of land, or dependant zumeendar, or under-farmer, or ryot, or their sureties; and all loans made in opposition to this prohibition are declared irrecoverable in any court of judicature. *Beng.* Reg. XXXVIII. 1793, sect. 2. *Ben.* Reg. XLVIII. 1795, sect. 2. *Ced. Prov.* Reg. XIX. 1803, sect. 2.

Covenanted officers are not to lend money to landholders:

3438. All covenanted civil servants, in whatever department of the public service they may be employed, are prohibited, under pain of dismissal from office, from borrowing money from, or in any way incurring debt to, any native officer under their authority, or under the authority of any of their subordinate functionaries, or from or to the known surety, agent, relation, connection, or dependant of any such native officer, or from or to any person of whom such native officer may be known to be or to have been the servant, agent, surety, or dependant. Reg. VII. 1823, sect. 2, cl. 1.

or to incur debt to any native officer under their authority, or to any one personally connected with such officer;

3439. In like manner and under the like penalty, all officers of government, being covenanted civil servants are prohibited from borrowing from, or in any way incurring debt to, any manager, guardian, executor, ameen, sezawul, gomashtah, farmer, mootuwullee, or other person who may in any way be officially accountable to them, or from and to the known surety, agent, relation, connection, or dependant of such person. Reg. VII. 1823, sect. 2, cl. 2.

or to any person officially accountable to them;

3440. All judges, magistrates, and assistants to magistrates, are prohibited, under pain of dismissal from office, from borrowing money from, or in any way incurring debt to, any zumeendar, talookdar, ryot, or other person possessing real property, or residing in, or having a commercial establishment within the city, district, or division, to which their authority extends. Reg. VII. 1823, sect. 3.

or to any person residing, in, or having property within their districts.

No person being a creditor of any officer is to be appointed to any official situation on his establishment.

3441. All persons are prohibited from lending money, or otherwise becoming in any way creditor to any officer of government, being a covenanted civil servant, in contravention of the above rules: and any person lending money, or in any way becoming creditor, to any such public officer in breach of this prohibition, is to forfeit to government a sum equal to the amount for which he has so illegally become creditor. Reg. VII. 1823, sect. 4.

Officers receiving new appointments if indebted to any individual, contrary to the above rules, to report.

3442. If any covenanted servant, who may be hereafter appointed to any office, shall at the time of such appointment be indebted to any person with whom it would be illegal for him to contract a loan, while holding such office, it shall be incumbent on such servant, before entering on the duties of such office, to make known the circumstance to government; and failing to do so, he is to be subject to the same penalty, as if the debt had been contracted subsequently to his being appointed to the said office. Reg. VII. 1823, sect. 6.

No money is to be lent to such officers contrary to the above rules, under pain of a certain penalty.

Precautions to be taken against such appointments.

3443. No person being a creditor of any judge or magistrate is to be appointed to any official situation on the establishment of the person whose creditor he is. It is consequently the duty of the superior authorities, on receiving the prescribed reports, to satisfy themselves fully that the natives, recommended to fill any vacancies on the establishments of the European officers acting under their control respectively, are not the creditors of the latter. With this view it is the duty of such authorities to make full inquiries on the subject, not only from the officers from whom such reports are received, but through such other channels as are necessary to guard against any infringement or evasion of these provisions. Reg. XXI. 1814, sect. 2.

This rule applies equally to the relatives and dependants of such creditors.

3444. The rules contained in the preceding section, for precluding the creditors of the public officers above-mentioned from being employed on their public establishments, are to be considered equally applicable to the relatives and dependants of such creditors: the former as well as the latter are consequently equally precluded from being employed on the establishments of any of the public officers above described. Reg. XXI. 1814, sect. 3.

Penalty on natives knowingly taking office in contravention of these rules.

3445. Any native causing himself to be appointed to any office in opposition to the provisions of Reg. XXI. 1814, or in any way knowingly accepting office in contravention thereof, is to forfeit to government a sum equal to ten times the yearly salary or allowances attached to the situation, to which he is appointed. Reg. VII. 1823, sect. 7.

Penalties to be enforced by prosecution at the suit of government.

3446. Suits for the recovery of penalties incurred under this regulation are to be instituted under the special instructions of government, and are to be conducted by the superintendent and remembrancer of legal affairs, or by such other officer as government may nominate for that purpose; such suits are to be instituted in the provincial court of the jurisdiction within which the transaction has taken place, or the lender resides, or possesses real or personal property. An appeal lies from judgments passed in such cases, in like manner as from other judgments passed in original suits by the provincial courts; and the judgments are to be enforced under the provisions of the regulations for the execution of other decrees of the civil courts. Reg. VII. 1823, sect. 8.

Sale of property to the natives.

3447. Civil servants are allowed to sell private property to natives, reporting the actual cost of the property to be sold to them, the name of the purchaser, his situation,

and the price of the purchase money. Govt. Order, September 19, 1837. But the Court of Directors have declared that they will consider every officer highly culpable who is habitually concerned in sales of horses, cattle, &c. with zumeendars who might be suitors in their courts.

Sales of property to native princes, exceeding 5000 rupees, must receive the previous sanction of government.

3448. All sales, purchases, and transfers, between the civil and military servants of government on the one hand, and foreign princes and chiefs or natives of rank and opulence residing under the protection of the British government on the other hand, of grounds, houses, boats, equipages, horses, elephants, plate, furniture, and generally every description of private property exceeding the value of five thousand rupees, without the sanction of government being previously obtained, are prohibited under such penalties as the circumstances of each particular case of disobedience to these orders may demand. In such cases intimation of the proposed sale and transfer of such property, and the consideration to be received for it, is to be given to government through the principal local authorities. Govt. Resolution, October 31, 1821.

Borrowing from natives.

3449. Persons in public authority are not to borrow boats, elephants, &c. from the natives: a commissioner of circuit was considered to have been rightly censured for applying to a zumeendar for the gratuitous use of his budgerow. Letter from the Court of Directors, dated December 23, 1833.

Nuzzurs are prohibited.

3450. The custom of natives presenting nuzzurs in money, trays of fruit, and other articles, on the occasion of their paying official or complimentary visits to public functionaries in the service of the Company, is strictly prohibited: and such officers are to adopt every measure within their power to make this prohibition generally known and obeyed by all natives of whatever rank or degree, with whom they have official or private intercourse. Govt. Resolution, June 2, 1829.

Private trading.

3451. Members of the civil service may become shareholders in Assurance and other companies; but, as the occupations of a private institution cannot be allowed to interfere with the claims of the public service to the undivided attention of the Company's servants, they are positively interdicted from taking any part in the management of such companies. This interdict does not, however, apply to the Asiatic, the Agricultural, or other such Societies, which cannot in any way be looked upon as trading establishments. See Bengal and Agra Guide, 1842, vol. 1, part 1, page 304.

Private disputes interfering with the due discharge of public duties.

3452. The following is an extract from an order of government, dated September 5, 1839.—" It remains for the governor general to express his general sentiments on a point which has evidently been instrumental in producing dissensions between officers, whose bounden duty to the government, which they serve, it was, and always must be, to merge all personal feelings and official pretensions in zeal for the public interest. The matter to which his lordship alludes is that tenaciousness of their own authority and readiness to interfere with the authority of other distinct functionaries, which make those, who are most sensitive of any encroachment on their own power and prerogative, the very persons likely to infringe the just and proper authority of others. To cavil about trifles in the intercourse of official life, betrays not more the absence of generous and high-minded principles, than a readiness to postpone to selfish considerations the performance

of duties owing to the state. Every indulgence in harsh and acrimonious language in official correspondence falls under this censure, and no one can in any degree give way to it without losing somewhat of the confidence, which government would otherwise have placed in his judgment and discretion, as detracting from his trustworthiness, and even lessening his claims to high and confidential employment. The government has the strongest reason to expect that every one of its servants, to whom it confides the discharge of responsible duties, will, from the moment of assuming such charge, discard all private feelings of pique and animosity, that may interfere with the impartial and unprejudiced performance of public duty, and will manifest a spirit superior to the influences of party or personal motives. Those who appear ready to sacrifice their public duty to the indulgence of private resentment, can have little right to look for future patronage or distinction."

Reports on the official character and conduct of the several public functionaries.

3453. The following rules for reporting on the official character and conduct of the several public functionaries were promulgated for the information and guidance of all officers. The objects in view are: firstly, the carrying into effect the principle of enforcing responsibility in all superior functionaries for the incapacity, or neglect, or wrongs committed by the civil servants under them, unless they are, as the cases may admit, either redressed or reported to government: secondly, the bringing to the knowledge of government all instances of eminent merit and qualifications amongst its covenanted officers of all ranks; so that the government may be enabled, generally, to reward merit, to stimulate exertion, and to secure to the public service for vacant offices the best qualifications available.—In hearing appeals and cases sent from the sessions courts, every judge of the nizamut adawlut is to note, as each case proceeds, any points that strike him as affecting materially the character of the court below; and whenever, at the conclusion of a case, any judge is of opinion that the proceedings of such a court have been either remarkably well, or remarkably ill conducted, it is his duty to make a note thereon for the consideration of the court collectively at their English sitting. The court is to determine in what manner these notes may best be made available, in the preparation of their annual report, for the expression of their collective opinion on the quality of the business performed by every session judge. The nizamut adawlut is required to make a special report on the subject of any zillah, in which they are of opinion that the state of business is such as to make it desirable, for the sake of the public interests, that measures should be immediately taken to remedy the evil. In cases of less importance, it is the duty of the court to notice in their annual report any serious defect which they believe to exist in the administration of justice in any district under the jurisdiction.—It is the duty of the several commissioners of circuit to report, in their periodical police returns, their opinions on the general efficiency of the police of each district under their superintendence, and on the manner in which the various business in this department has been performed by each of the officers among whom it is distributed. It is also the duty of each commissioner to notice prominently in these reports the extent to which the services of the assistants to the magistrates and joint magistrates in his division have been employed, and the consequences of such employment, in order that the application and abilities of the several officers in the junior grades of the service may be brought distinctly under the view of the government.—It is the duty of the sudder court, of the commissioners, and of

The individual judges of the nizamut adawlut are to furnish notes on the cases submitted by the session judges: and the collective opinion of the court is to be expressed in their annual report.

In special cases, an immediate report of the state of any zillah is to be submitted to government: otherwise, serious defects are to be noted in the annual report.

Reports on the state of the police.

the magistrates and joint-magistrates, to report to their immediate superior every case in which they are of opinion that a covenanted officer, subordinate to them, is decidedly disqualified to discharge efficiently the duties entrusted to him; and it is hereby notified to all such functionaries that it is considered an essential part of their duty to make themselves acquainted with the manner in which their subordinate officers perform their duties, and that they themselves will be held responsible for any mischievous consequences that may result from any inefficiency, bad habits, or serious errors of conduct of those under them, that ought to have been known to them, unless they report the same for the information of their superiors. Govt. Notification, December 20, 1836. C. O. *W. P.* No. 222, *L. P.* No. 227 of vol. 2.

All officers are to report if a subordinate is decidedly disqualified to discharge his duties efficiently: if they fail to report, they are themselves to be held responsible.

3454. Officers submitting explanations from their subordinates are invariably to state, whether they consider the same to be sufficient and satisfactory, or otherwise. C. O. No. 219 of vol. 2.

Opinion to be expressed of explanations from subordinates.

Charges against.

3455. Whenever either of the courts of sudder dewanny and nizamut adawlut, either of the sudder boards of revenue, or the board of customs, salt, and opium, are of opinion that substantial grounds exist for making a regular and formal inquiry into the truth of any imputation of official misconduct affecting any officer subject to their controul respectively, and not removable without the sanction of government, they are to submit the documents on which their opinion is founded, together with a statement of the charges reduced to distinct articles, which they propose to be made the subject of a regular investigation, to the Governor of Bengal, or to the Lieutenant-Governor of the north-western provinces, or to any functionary exercising the authority of government in the north-western provinces, as the case may be, according to the authority to which they are subject, for his consideration and orders. Act XXVI. 1839, sect. 2.

How the sudder courts, the boards of revenue, and the board of customs, salt, and opium, are to proceed, when there appear grounds for making a formal inquiry into charges affecting officers subject to their controul.

3456. Any charge or information, of the description aforesaid, may be preferred direct to either of the courts of sudder dewanny and nizamut adawlut, either of the sudder boards of revenue, or the board of customs, salt, and opium, respectively, who are to examine the complainant or informant circumstantially upon oath, or upon solemn affirmation if he be entitled to be exempted from taking an oath, and to require the party accused to explain or reply to any matters they deem to need explanation, and to make such further inquiries upon oath or affirmation upon the subject as they may judge proper. Act XXVI. 1839, sect. 3.

Charge may be made to such courts direct; and in such case those courts how to proceed.

3457. Any charge or information may also be made before any judge, magistrate, commissioner of revenue, or collector, for any acts of the description before-mentioned, committed within their jurisdiction, respectively, who are to examine the complainant or informant circumstantially upon oath, or upon solemn affirmation if he be entitled to be exempted from taking an oath, and are to transmit the deposition so taken to the sudder dewanny and nizamut adawlut, the sudder board of revenue, or the board of customs, salt, and opium, according as the person accused is subject to those authorities respectively. Act XXVI. 1839, sect. 4.

Or charge may be made to the judge, magistrate, commissioner, or collector; such officer how to proceed.

3458. But it is not lawful for the courts of sudder dewanny and nizamut adawlut or the said boards, respectively, to act upon any such charge or information, unless the person preferring the same makes oath, or solemn affirmation, in case he be entitled to be

Charge must be laid on oath, or solemn affirmation.

exempted from taking an oath, that he believes the facts on which the charge is grounded to be true. Act XXVI. 1839, sect. 5.

Charge may be dismissed; but is in every case to be submitted to government.

3459. It is lawful for the courts of sudder dewanny and nizamut adawlut, and for the said boards, respectively, to dismiss any such charge or information, where they do not see any substantial reason for entering further into the inquiry. Provided, that on every occasion when they dismiss any such charge or information, they are to submit the same, together with all the circumstances of the case, in like manner as is provided in section 2 of this Act. Act XXVI. 1839, sect. 6.

Person performing the charge may be required at any stage to furnish security to prosecute.

3460. The said courts of sudder dewanny and nizamut adawlut, and the said boards, respectively, may, at any stage of the inquiry into such matters as aforesaid, require the person preferring such charge or information as aforesaid to furnish such security as may be deemed reasonable that he will attend and prosecute the charge to a conclusion; and in the event of security being so required all proceedings are to be stayed until the same is furnished accordingly. Act XXVI. 1839, sect. 7.

The courts above-mentioned may take up charge appearing in any proceedings, though no charge is preferred on oath, or solemn affirmation.

3461. If any matter of the nature aforesaid affecting such officer as is mentioned in the second section of this Act appears in the course of any proceedings, whether preliminary or otherwise, which come before or are reported to either of the courts of sudder dewanny and nizamut adawlut, or any of the said boards, respectively, those authorities are to act upon such matter, or to institute such inquiry upon oath or affirmation as aforesaid into the same as they deem proper for the purpose of such reference as aforesaid to the Governor of Bengal, or to the Lieutenant-Governor of the north-western provinces, or to the authority exercising the powers of government in those provinces as aforesaid, although no charge or information be preferred as aforesaid; and in such cases it is not necessary, before acting upon or instituting any inquiry concerning any matter so appearing in the course of proceedings, to require any oath or affirmation in regard to the truth of such matter. Act XXVI. 1839, sect. 8.

Government to appoint a commissioner or commissioners to make a regular and formal enquiry.

3462. If the Governor of Bengal, or the Lieutenant-Governor of the north-western provinces, or the authority exercising the powers of government in those provinces as aforesaid, upon such reference as is mentioned in the second section of this Act, concurs with the authority by which it is submitted; or if such Governor, or Lieutenant-Governor or authority exercising the powers of government, from information of the description aforesaid that may be laid before him in respect to such officers as aforesaid not directly subject to the courts or boards above-named, deems it necessary to institute proceedings against any such officers; he is to appoint a commissioner or commissioners for making a regular and formal inquiry into the truth of the matters referred. Act XXVI. 1839, sect. 9.

Such commissioners to act under controul of what authority.

3463. On the appointment of every such commission, the said Governor, or Lieutenant-Governor, or authority exercising the powers of government in the north-western provinces, is to direct whether the commission is to be placed under the controul of any of the authorities aforesaid, or is to act immediately under the authority of government; and all commissions appointed as aforesaid are to be guided by the instructions which they may receive in this behalf from the government to which they are respectively subordinate. Act XXVI. 1839, sect. 10.

Commissioner to take oath.

3464. The commissioner or commissioners appointed as aforesaid, before entering on the discharge of his or their duties, are to take the following oath:—"I, A. B., commissioner for the purpose of (*here state the object of the commission*) do solemnly swear that I will faithfully and impartially perform the duty committed to me without fear, favor, or bias, to the best of my ability, knowledge, and judgment; so help me God." Act XXVI. 1839, sect. 11.

3465. If a commissioner has not subscribed such oath before an officer authorized to administer the same, his proceedings are altogether illegal and invalid. Const. No. 1289.

How such cases are to be prosecuted.

3466. Whenever a charge is referred for investigation to a special commission, the said Governor, or Lieutenant-Governor, or authority exercising the powers of government in the north-western provinces, is to determine whether the conduct of the prosecution is to be left to the accuser, or to be undertaken on the part of government. In the latter case, the said Governor, or Lieutenant-Governor, or authority exercising the powers of government in the north-western provinces, is to nominate such person or persons as may be deemed proper, to conduct the prosecution on behalf of government. Act XXVI. 1839, sect. 12.

Mode of enquiry.

3467. It is the duty of commissioners appointed under this Regulation, after receiving the plaint or charge, and the documents from which the same may have been prepared, to call upon the person accused for his reply to the accusation; to examine upon oath, or under a solemn declaration, the witnesses named by the accuser or the accused; to receive any further written documents offered in support of, or against, the accusation; and to call for and take any further requisite evidence which may be indicated by the witnesses adduced or documents exhibited by either party, and may appear to be necessary for the ascertainment of facts, or the discovery of the truth or falsehood of the charges, or of any part thereof. Act XXVI. 1839, sect. 13.

What power is vested in such commission.

Processes how to be served.

3468. For the discharge of the duties specified in the preceding section, or any other functions which may be delegated to a commission under this Regulation, such commission is to be vested with the same powers as are exercised by the zillah and city courts; except that all processes to cause the attendance of witnesses, or other compulsory process, are to be served through the zillah or city judge in whose jurisdiction the commission is held, and to be executed by the zillah or city judge in whose jurisdiction the witness or other person upon whom the process is to be served may reside. Act XXVI. 1839, sect. 14.

On the close of the proceedings the accused and the prosecutor may record remarks.

3469. On the close of the evidence for the prosecution and defence, the accused is to be at liberty to record any observations upon the result of the inquiry, which he may think necessary for the vindication of his conduct and character. The accuser, or the person appointed to conduct the prosecution on the part of government, is also to be at liberty to record any remarks on the subject of the prosecution which he may deem requisite. Act. XXVI. 1839, sect. 15.

Proceedings to be submitted in what manner, and to what authority.

3470. As soon after the conclusion of the proceedings as circumstances permit, the commissioner or commissioners are, when the commission is instructed to act immediately under the authority of government, to submit directly to the government to which he or

they are subordinate; and in other cases to the controlling court or board; the proceedings under the commission, accompanied by translations of papers not in the English language, together with a summary of the pleadings and evidence, and his or their opinion of the merits of the case. Act XXVI. 1839, sect. 16.

Commission may be required to take further evidence, or to give further explanation.

3471. It is lawful for the said Governor, Lieutenant-Governor, or authority exercising the powers of government in the north-western provinces, or the controlling court or board, upon consideration of the report of any such commission as aforesaid, to direct the commissioner or commissioners to take further evidence, or to give further explanation of his or their opinion or opinions connected with the case investigated, and the commissioner or commissioners are authorized and required to take such further evidence, and to give such further explanation. Act XXVI. 1839, sect. 17.

Controlling courts are to summit the whole of the proceedings and documents to government.

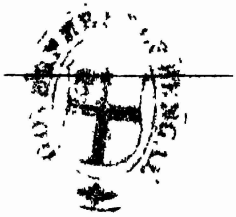
3472. The sudder dewanny and nizamut adawlut, or the board to which any report of a commissioner or commissioners is submitted as aforesaid, after due consideration of the same, and after obtaining such further evidence or explanations as they require, are to submit the whole of the proceedings and documents received by them to the government to which they are subordinate, together with their opinion whether any and what charges have been established against the accused. Act XXVI. 1839, sect. 18.

Government is to determine whether the accused is to be suspended, and what allowances he is to draw.

3473. Whenever a special commission may be appointed under the provisions of this Act, the said Governor, or Lieutenant-Governor, or authority exercising the powers of government in the north-western provinces, is to determine, on a view of the nature and circumstances of the case, whether the accused officer is to be suspended from the discharge of the functions of his office; and if so, whether he is to be permitted to draw the established allowances of his office, or otherwise. Act XXVI. 1839, sect. 19.

Government is to pass decision on the case; and may order a public prosecution before a competent court of law.

3474. The Governor, or Lieutenant-Governor, or authority exercising the powers of government in the north-western provinces, on consideration of the report and proceedings submitted to him, in pursuance of sections 16 and 18 of this Act, is to pass such decision on the case as appears to him most consonant to the principles of justice, and consistent with the powers possessed by government in matters of this description; and in the event of his deeming it necessary that the party accused should be brought to trial by a public prosecution before a competent court of law, is to issue the necessary instructions for that purpose to the law officers of government. But whatever proceedings are held, or whatever decision or order is passed by government, individuals deeming themselves aggrieved by any public officer are at all times at liberty to seek redress according to the ordinary forms prescribed by law. Act XXVI. 1839, sect. 20.



APPENDIX A.

Processes to be used by Magistrate.

APPENDIX A. No. 1.

Reg. IX. 1807, sect. 3, cl. 2.

See paragraphs 231, 1094, 1101.

To Nazir of the Foujdaree Adawlut of the zillah (or city) of

Form of warrant.

Whereas , inhabitant of , stands charged, on the oath (or solemn declaration) of , inhabitant of , with the crime of , you are hereby directed to apprehend the said ; and produce him before the magistrate of the said zillah (or city); in this fail not. Dated the day of A. C. corresponding with

APPENDIX A. No. 2.

Reg. IX. 1807, sect. 3, cl. 3.

See paragraphs 232 *and* 1102.

To , Nazir of the Foujdaree Adawlut of the zillah (or city) of

Form of warrant, when bail and security for keeping the peace may be taken.

Whereas , inhabitant of , stands charged on the oath (or solemn declaration) of , inhabitant of , with the crime of , you are hereby directed to apprehend the said , and to require bail in the sum of rupees for his appearance before the magistrate of the said zillah (or city) on or before the . (You are further required to take security from the said for keeping the peace, in the sum of rupees .) If the said shall not give the bail (and security) above stated, you are directed to bring him before the magistrate of the said zillah (or city); herein fail not. Dated this day of A. C. corresponding with

APPENDIX A. No. 3.

Reg. IX. 1807, sect. 3, cl. 4; and sect. 6, cl. 4.

See paragraphs 232, 239, 1103, 1159.

Form of bail bond for appearance before the magistrate.

Whereas , inhabitant of , stands charged with ; and is required to appear before the magistrate of the zillah (or city) of , on or before the , to answer to such charge; I hereby bind myself to produce the said before the said magistrate on the date aforesaid, and to be answerable for his appearance until a final order be passed by the magistrate upon the said charge: in default whereof, I further bind myself to forfeit to Government the sum of rupees ; in this I will not fail. Dated this day of A. C. corresponding with

APPENDIX A. No. 4.

Reg. IX. 1807, sect. 3, cl. 5.

See paragraphs 232, 1103.

Form of security bond for keeping the peace.

Whereas , inhabitant of , stands charged with , and has been called upon to give security to keep the peace whilst such charge is under investigation, I hereby declare myself surety for the said , that he shall not commit any act that can occasion a breach of the peace, whilst the said charge is under examination; in default whereof, I further bind myself to forfeit to Government the sum of rupees . Dated this .

APPENDIX A. No. 5.

Reg. IX. 1807, sect. 6, cl. 2.

See paragraphs 239, 1092.

To , inhabitant of

Form of summons.

Whereas a complaint has been preferred on oath (or solemn declaration) by inhabitant of charging you with the crime of , you are hereby required to appear (in person or by vakeel) before the magistrate of the zillah (or city of) on or before the day of , to answer to the said charge. Herein fail not. Dated the day of A. C. corresponding with .

APPENDIX A. No. 6.

Reg. IX. 1807, sect. 6, cl. 3.

See paragraphs 239, 1093.

To inhabitant of .

Form of summons when bail is required.

Whereas a complaint has been preferred on oath (or solemn declaration) by , inhabitant of , charging you with , you are hereby required to appear (in person or by vakeel) before the magistrate of the zillah (or city) of , on or before the , to answer to the said charge. You are further required to give bail in rupees , for your appearance (in person or by vakeel) on the day aforesaid. Herein fail not. Dated the day of A. C. corresponding with

APPENDIX A. No. 7.

Reg. IX. 1807, sect. 10.

See paragraph 1158.

Form of bail bond, when a person is held to bail for trial before the sessions court.

Whereas , inhabitant of , stands charged with , and has been admitted to bail by the magistrate of on condition of his appearance, to stand his trial on the said charge before the sessions court of , I hereby bind myself to produce the said before the said sessions court on the date whereupon his appearance may be required, either by a general proclamation, or by a special notice, from the magistrate, and to be answerable for his appearance before the sessions court until a final sentence be passed upon the said charge; in default whereof, I further bind myself to forfeit to government the sum of rupees ; in this I will not fail. Dated

APPENDIX A. No. 8.

Reg. III. 1812, No. 4.

See paragraph 1871.

No. of Warrant. (L. S.)

To *(name of the landholder, farmer, or local agent, to whom the warrant may be addressed, and the name of the estate, pergunnah, or mahal, of which he may be proprietor, farmer, or manager).*

Form of warrant for the apprehension of convicts who have escaped.

Whereas the person or persons (convicts) herein named, having effected his or their escape from the jail of zillah (or city) , you are hereby authorized and required to apprehend and deliver over to the custody of the nearest or other police officer of government, the said person or persons, all or any of whom shall be found within the limits of the estate, farm, or lands committed to your management, or to give information to the magistrate or nearest police officer of government, of the place of concealment, resort, or abode of such person or persons, so that he or they may be apprehended. In this fail not. Dated .

Name and caste of the persons, who have escaped from jail.	Name of the father.	Supposed age.	Description of his person.	Supposed usual place of residence.	Amount of reward offered for his apprehension.	Date of apprehension, surrender, or ascertained death.

The number of persons included in the list, to be specified in English by the magistrate.
Zillah, and date of Warrant.

(Signature of the Magistrate.)

APPENDIX A. No. 9.

Reg. III. 1812, No. 6.

See paragraph 1871.

No. of Warrant. (L. S.)

To *(name of the landholder, farmer, or local agent, to whom the warrant may be addressed, and the name of the estate, pergunnah, or mahal, of which he may be proprietor, farmer, or manager).*

Form of warrant for the apprehension of persons charged

Whereas the person or persons herein named, have been charged on oath before the magistrate of zillah (or city) , with the crimes herein specified, and whereas the magistrate has strong grounds to suspect that such person or persons have been concerned as principals or accessaries in the perpetration of

with specific crimes, who may have eluded the pursuit of justice.

the said crimes, and the appearance of such person or persons being required at the cutcherry of the magistrate of the aforesaid zillah (or city), to answer to the matter alleged against them, you are hereby authorized and directed to apprehend, and to deliver into the custody of the nearest or other police officer of government, the person or persons herein named, should all or any of them be found within the limits of your estate, farm, or lands, or to give information to the magistrate, or nearest police officer, of the place of concealment or abode of such person or persons, so that he or they may be apprehended.

In this fail not. Dated .

Name and caste of the persons accused or suspected.	Name of the father.	Supposed age.	Description of his person.	Supposed usual place of residence.	Amount of reward offered for his apprehension.	Date of apprehension, surrender, or ascertained death.

The number of persons included in the list, to be specified in English by the magistrate.

Zillah, and date of Warrant.

(Signature of the Magistrate.)

APPENDIX A. No. 9½.

Reg. I. 1811, sect. 11, cl. 2.

See paragraph 1164.

Form of search-warrant for stolen property.

Whereas there is strong cause to suspect, that stolen goods or effects are concealed within the dwelling house or premises of *(name and caste of suspected person)*, inhabitant of *(name of village or other place of residence)*, you are hereby authorized and required, with necessary and proper assistance, to enter into the said dwelling house or premises of the said *(name)*, and if any goods or effects shall be found therein, which there may appear cause to suspect to have been stolen, you are required to bring the property so found, and also the person of the said *(name)* before this court.

Processes to be used by Police Officers.

APPENDIX A. No. 10.

Reg. XX. 1817, No. 15.

See paragraphs 250, 1099.

To , inhabitant of .

Whereas your attendance is necessary to answer to a charge of , you are hereby required to appear, in person or by vakeel, before the magistrate of the zillah (or city) of (or at the thana of), on or before the day of ; herein fail not . Dated the day of .

Form of summons to be used by police officers.

APPENDIX A. No. 11.

Reg. XX. 1817, No. 16.

See paragraphs 251, 1099.

To , inhabitant of .

Whereas your attendance is necessary to answer to a charge of ; you are hereby required to appear, in person or by vakeel, before the magistrate of the zillah (or city) of (or at the thana of), on or before the ; you are further required to furnish a surety (or sureties) in the sum of rupees , for your attendance, in person or by vakeel, during the trial of the case before the magistrate. Herein fail not. Dated the day of

Form of summons requiring bail to be used by police officers.

APPENDIX A. No. 12.

Reg. XX. 1817, No. 17.

See paragraphs 252, 1100, 1105.

To *(name and designation of person deputed to serve the warrant).*

Whereas , inhabitant of , stands charged with the crime of , you are hereby directed to apprehend the said , and to produce him before me. In this fail not. Dated the day of .

N. B. The warrant is to be addressed to the jemadar, or other police officer, by whom it is to be executed; and is, in all practicable cases, to bear the seal of the thana, and invariably the signature of the officer issuing the process.

Form of warrant to be used by police officers.

APPENDIX A. No. 13.

Reg. XX. 1817, No. 18.

See paragraphs 254, 1135.

Whereas , inhabitant of , stands charged with , and is required to appear before the magistrate of the zillah (or city) of , on or before the , to answer to such charge : I hereby bind myself to produce the said , before the said magistrate on the date aforesaid ; and to be answerable for his appearance, until a final order be passed by the magistrate upon the said charge; in default whereof, I further bind myself to forfeit to government the sum of rupees : in this I will not fail. Dated this day of .

Bail-bond to be used by police officers.

APPENDIX A. No. 14.

Reg. XX. 1817, No. 19.

See paragraph 256.

Form of recognizance for keeping the peace to be used by police officers.

Whereas , inhabitant of , stands charged with , and has been called upon to give security to keep the peace whilst such charge is under investigation: I hereby declare myself surety for , the said that he shall not commit any act that can occasion a breach of the peace, whilst the said charge is under examination; in default whereof, I further hereby bind myself to forfeit to government the sum of rupees . Dated this day of .

APPENDIX A. No. 15.

Reg. XX. 1817, No. 11.

See paragraph 349.

Form of subpœna to prosecutors and witnesses to be used by police officers.

To , inhabitant of .

Whereas your attendance is required to state what you know in the case of , you are hereby required to appear at the thana of , on *(day of week)* the *(date)* at the hour of : herein fail not. Dated the *(day of month and year current in the jurisdiction)*.

APPENDIX A. No. 16.

Reg. XX. 1817, No. 12.

See paragraphs 350, 1161.

Recognizance to be taken from a prosecutor by police officers.

Whereas I , inhabitant of , have complained against , inhabitant of , charging him with ; I hereby engage to appear before the magistrate of the zillah (or city) of , on or before the , to prosecute the said complaint: in default whereof I further bind myself to pay such fine to government as the magistrate may judge proper to impose upon me, as well as any expense that may be incurred, in consequence of my non-attendance, for compelling my appearance: in this I will not fail. Date *(according to the current era)*.

APPENDIX A. No. 17.

Reg. XX. 1817, No. 13.

See paragraphs 350, 1117, 1161.

Recognizance to be taken from a witness by police officers.

Whereas I , inhabitant of , have been named as a witness in the case of ; I hereby engage to appear before the magistrate of the zillah (or city) of , on or before the , for the purpose of giving evidence; in default whereof, I hereby further bind myself to pay such fine to government as the magistrate may judge proper to impose upon me, as well as any expense that may be incurred, in consequence of my non-attendance, for compelling my appearance: in this I will not fail. Dated *(according to the current era)*.

APPENDIX A. No. 17½.

Reg. XX. 1817, No. 14.

See paragraph 1161.

Certificate of despatch of prosecutor or witness by police officer to magistrate.

Name of the prosecutor or witness.	Case.	Date of despatch from the thana.	Name of the thana.
Ramdial, witness.	Methoo, charged with the murder of Ram Sing. Chalan No. 4.	5th April.	Sumbul.

APPENDIX A. No. 18.

Reg. XX. 1817, No. 10.

See paragraph 1171.

Form of search warrant to be used by police officers.

Whereas there is strong cause to suspect, that plundered or stolen goods or effects are within the dwelling house or premises of *(name and caste of suspected person)* inhabitant of ; you are hereby authorized and required, with necessary and proper assistance to enter into the said dwelling house or premises of the said , and if any goods or effects shall be found therein, which there may appear cause to suspect to have been plundered or stolen, you are required to bring the property so found, and also the person of the said , to the thana of . *Dated the day of* .

APPENDIX A. No. 19.

Reg. XX. 1817, No. 20.

See paragraph 1194.

Process to be delivered to a muzkooree peon, deputed to aid a distrainer.

Form of distraint to be used by police officers.

Whereas *(name of the distrainer or of his local agent)* has made oath before me, that he has been opposed, or that he fears he may be opposed, in effecting the distraint of certain property belonging to ; which he considers it necessary to attach for the recovery of an arrear of land rent, amounting to rupees , due from *(name of the defaulter or of his security)*: the bearer of this process *(name of the muzkooree peon)* has been deputed from this thana to aid the distress of the property of the said *(name of the defaulter or security)*; and it is hereby notified to the said *(name of the defaulter or security)* that if he disputes the justness of the arrear demanded, it behoves him to apply forthwith, under the provisions of sections 15 and 16 of Regulation V. 1812, to the judge or collector of the zillah, or to the cauzee or moonsiff of the pergunnah; but that, in the meantime, he is required either to liquidate the amount claimed, or to allow his property to be peaceably distrained, under penalty, in case of disobedience to this requisition, of suffering such punishment as the magistrate may, under the regulations, judge proper to inflict. Dated this day of .

Processes to be served within the local limits of the Supreme Court.

APPENDIX A. No. 20.

C. O. No. 185 of vol. 3.

See paragraph 1213.

TO THE HONORABLE COMPANY'S ATTORNEY, CALCUTTA.

SIR,

I beg leave to enclose you (a notice* to be served on the parties therein named,) which I request you will have the goodness to present to the Judges of Her Majesty's Court agreeably to Act XXIII. 1840.

2. On intimation being made to me of the expenses of serving this process, the amount will be forwarded to the justices by a bill on the general treasury. A person will attend hereafter (or, a person accompanies this letter) to point out the parties.

I have the honor to be,

Sir,

Your most obedient servant,

Judge or Magistrate.

* or,
(a proclamation to be affixed to the outer door of the house in which the parties reside,)
or,
(a subpœna to be served on the witnesses therein named,)
or,
(a warrant to seize and apprehend the witnesses therein named,)
and so forth, *mutatis mutandis.*

Zillah ———— }
January 184—. }

APPENDIX A. No. 20½.

C. O. No. 82 of vol. 3.

See paragraph 1213.

Summons.

To RAMDHUN MISTRY, inhabitant of Coolootullah, in the Town of Calcutta.

Whereas a complaint has been preferred on the solemn declaration of Sheik Ramjoo, inhabitant of Sealdah, in the 24-Pergunnahs, charging you with assault: you are hereby required to appear before the magistrate (or the principal sudder ameen, or sudder ameen) of the zillah of the 24-Pergunnahs, on or before the 15th day of April 1841, to answer to the said charge. Herein fail not. Dated the 2nd day of April 1841.

L. S. A. B.

Magistrate.

APPENDIX A. No. 21.

C. O. No. 82 of vol. 3.

See paragraph 1213.

To MOHUMMUD NAZIM, Nazir of the Foujdaree Court of the 24-Pergunnahs.

Warrant with bail.

Whereas John Brown, inhabitant of Sealdah, stands charged on the solemn declaration of Rampersaud bearer, with assault attended with severe wounding: you are hereby directed to apprehend the said John Brown, and to require bail in the sum of 500 rupees for his appearance, before the magistrate of the said court, on or before the 20th day of April 1841; and if the said John Brown shall not give the bail above stated, you are directed to bring him before the magistrate of the said court. Herein fail not. Dated this 4th day of April 1841.

L. S. A. B.
Magistrate.

APPENDIX A. No. 22.

C. O. No. 82 of vol. 3.

See paragraph 1213.

To MOHUMMUD NAZIM, Nazir of the Foujdaree Court of the 24-Pergunnahs.

Warrant.

Whereas Abdoollah Garewan, inhabitant of Kuryah, stands charged on the solemn declaration of Peerbux, inhabitant of Sulkea, with the crime of murder: you are hereby directed to apprehend the said Abdoollah Garewan, and to produce him before the magistrate of the said court. In this fail not. Dated the 5th day of April 1841.

L. S. A. B.
Magistrate.

APPENDIX A. No. 23.

C. O. No. 82 of vol. 3.

See paragraph 1213.

To MOHUMMUD NAZIM, Nazir of the Foujdaree Court of the 24-Pergunnahs.

Search warrant.

Whereas Ramdoolal, inhabitant of Manicktollah, hath made information and complaint on solemn declaration, that the following property, that is to say, two brass lotahs, one string of gold beads, and two pieces of long cloth, were stolen from his house, situated at Manicktollah aforesaid, and that he suspects that the aforesaid property is concealed within the dwelling house and premises of Hookoor Chand Mug, inhabitant of Chore Bagan in the town of Calcutta: you are hereby authorized and required, with the necessary and proper assistance, to enter into the said dwelling house and premises of the said Hookoor Chand Mug in the day-time; and if the said property shall be found therein, you are required to bring the property so found and also the person of the said Hookoor Chand Mug before this court.

Given under my hand and the seal of the court, this 6th day of April 1841.

L. S. A. B.
Magistrate.

APPENDIX A. No. 24.

C. O. No. 82 of vol. 3.

See paragraph 1213.

To SHEIK PEERBUX, inhabitant of Coolootullah, in the Town of Calcutta.

Subpœna.

Whereas your attendance is required to give evidence on behalf of Sheikh Miskin, inhabitant of Sulkea, in a case of assault: you are hereby required personally to appear before the magistrate (or the principal sudder ameen) of the zillah of the 24-Pergunnahs on the 6th day of April 1841. Herein fail not. Dated the 2d day of April 1841.

L. S. A. B.

Magistrate.

APPENDIX A. No. 25.

C. O. No. 82 of vol. 3.

See paragraph 1213.

To MOHUMMUD NAZIM, Nazir of the Foujdaree Court of the 24-Pergunnahs.

Warrant for a witness.

Whereas Sheik Peerbux, inhabitant of Coolootullah, in the town of Calcutta, was duly subpœnaed on the 4th day of April 1841, to give evidence in behalf of Sheik Miskin, inhabitant of Sulkea, in a case of assault, and whereas the sum of five rupees was tendered to the said Sheik Peerbux for his expenses, as appears by the declaration of Sheik Rumzoo Peada, who has also declared to the due service of the said subpœna, and whereas the said Sheik Peerbux has neglected and refused to appear according to the exigence of the subpœna: you are hereby directed to apprehend the said Sheik Peerbux, and to produce him before the magistrate of the said court. In this fail not. Dated the 7th day of April 1841.

L. S. A. B.

Magistrate.

APPENDIX A. No. 26.

C. O. No. 82 of vol. 3.

See paragraph 1213.

Proclamation of the Foujdaree Adawlut of Zillah 24-Pergunnahs.

Proclamation for the attendance of a party charged with a criminal offence.

Whereas Ramdhun, inhabitant of Sealdah, stands charged on the solemn declaration of Rumzoo, inhabitant of Sealdah, with the crime of dacoity, and whereas a warrant was on the 7th day of April issued for his apprehension to answer to the said charge, and whereas from the report of Mohummud Nazim, nazir, dated 12th April 1841, it appears that the said Ramdhun has absconded or concealed himself so that the said process cannot be served upon him: proclamation is therefore (in conformity to section 4, Regulation XI. 1796) hereby made that if the said Ramdhun shall not appear to answer to the said charge on or before the 15th May 1841, he will be subject to all the penalties of the aforesaid Regulation. Dated the 14th day of April 1841.

L. S. A. B.

Magistrate.

APPENDIX A. No. 27.

C. O. No. 82 of vol. 3.

See paragraph 1213.

Recognizance of a witness.

Whereas Sheik Janoo, inhabitant of Sulkea, has complained against Peru, inhabitant of Sealdah, charging him with assault, and I have been named as a witness for the complainant (or the defendant), I hereby engage to appear before the magistrate of the zillah of the 24-Pergunnahs on or before the 12th day of April 1841, for the purpose of giving evidence: in default whereof, I hereby further bind myself to pay such fine to government as the magistrate may judge proper to impose on me, as well as any expenses, that may be incurred, in consequence of my non-attendance, for compelling my appearance. In this I will not fail. Dated the 7th day of April 1841.

L. S. SHEIK RUMZAN,

Inhabitant of Durrumtollah, Calcutta.

APPENDIX A. No. 28.

C. O. No. 82 of vol. 3.

See paragraph 1213.

Bail bond for the appearance of a person charged.

Whereas Syfoo, inhabitant of Sealdah, stands charged with assault, and is required to appear before the magistrate of the zillah of the 24-Pergunnahs, on or before the 5th April 1841, to answer to such charge, I hereby bind myself to produce the said Syfoo before the said magistrate on the date aforesaid, and to be answerable for his appearance until a final order be passed by the magistrate upon the said charge ; in default whereof I further bind myself to forfeit to government the sum of one hundred rupees. In this I will not fail. Dated this 5th day of March 1841.

L. S. PEERBUX.

APPENDIX A. No. 29.

C. O. No. 205 of vol. 3.

See paragraphs 1095, 1214.

To MOHUMMUD NAZIM, Nazir of the Foujdaree Court of the 24-Pergunnahs.

Warrant in cases of failure to serve summons.

Whereas a summons was issued against Ramdhun Mistry, to appear and answer to a charge of assault preferred by Sheik Rumjoo, and whereas it has been proved that, notwithstanding due diligence, the officer entrusted with the summons has been unable to serve the same on the defendant : you are hereby directed to apprehend the said Ramdhun Mistry, and to produce him before the magistrate of the said court. In this fail not. Dated the 5th day of April 1845.

L. S. A. B.

Magistrate.

APPENDIX A. No. 29½.

C. O. No. 232½ of vol. 3.

See paragraphs 1214, 1241.

To MOHUMMUD ALLY, Nazir of the Foujdaree Court of Zillah Hooghly.

Writ for attachment of property of persons charged with criminal offences, who have absconded.

Whereas a warrant was issued on the 1st of July 1846, for the apprehension of Ramdhun Bose, inhabitant of Byedbatty, to answer to a charge of highway robbery, and afterwards a proclamation was made, in conformity to section 4, Regulation XI. 1796, for the appearance of the said Ramdhun Bose; and whereas the said Ramdhun Bose has failed to make his appearance within the time limited in the said proclamation; you are therefore hereby authorized and commanded to attach and sequestrate any (land or other immovable property)* (goods, and effects, or other property) belonging to or possessed by the said Ramdhun Bose, and to hold the same under attachment and sequestration until otherwise commanded. Dated the 15th day of August 1846.

L. S. A. B.
Magistrate.

* The words "land or other immovable property" are to be employed when the attachment has reference to the rule in cl. 4, sect. 26, Reg. XX. 1817; and the words "goods, effects, or other property," when it has reference to cl. 6 of that section.

Precepts.

APPENDIX A. No. 30.

C. O. No. 160 of vol. 2. No. 6.

See paragraph 1040.

No. of Precept Register

Gopee Nath, Petitioner.

To A. B. Esq.,
Commissioner of Circuit, Division.
(*or Session Judge of Zillah* .)

Form of precept calling for proceedings, with a return.

Present.
C. T. Esq.,
Judge.

Herewith you will receive a petition from *(if other papers are sent they will be mentioned)* and an extract from the proceedings of the nizamut adawlut of the of , 184 , held before Mr. , to the orders contained in which you are required to conform; returning this precept duly executed, or good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, on or before the of , 184 .

By order of the Court of Nizamut Adawlut,

Fort William,
the of 184 .

C. D.
Register.

Return (To be endorsed on the preceding).

Court of the Session Judge of Zillah .

(or Commissioner of Division).

I, A. B. session judge *(or commissioner)*—do hereby certify, that the orders contained in this precept have been duly carried into execution.

Criminal Department,
(Division or District,)
the of 184 . } Given under my hand and the seal of the court, this day of , 184 .

A. B.

Session Judge.

MEMORANDUM OF PAPERS SUBMITTED.

Here mention the papers or proceedings submitted.

APPENDIX A. No. 31.

C. O. No. 160 of vol. 2, No. 7.

See paragraph 1040.

Gopee Nath, Petitioner.

To A. B., Esq.,
Session Judge of Zillah .

Herewith you will receive for your information and guidance an extract from the proceedings of the nizamut adawlut of the of , 184 , held before Mr. , to which you are required to conform; together with *(here mention the papers sent).*

Form of precept requiring no return.

By orders of the Court of Nizamut Adawlut,

Fort William,
the of , 184 . } C. D.
Register.

APPENDIX A. No. 32.

C. O. No. 212 of vol. 2, No. 9.

See paragraph 1041.

To the Register of the Court of Nizamut Adawlut.

M. N.
versus
R. S.

With reference to the precept of the nizamut adawlut, not requiring a return, dated the of , conveying an extract of the court's proceedings of the of , held before Mr. , in the case noted in the margin, I hereby certify the accompanying extract from my proceedings of the of . *(Here briefly state the object of the reference.)*

Certificate for the submission of proceedings giving information to the court, or soliciting orders in cases in which the precept requires no return.

Given under my hand and the seal of the court this day of 184 .

Adawlut,
The of 184 . } A. B.
Judge (or as the case may be.)

APPENDIX A. No. 33.

C. O. Nos. 160 and 174, of vol. 2, No. 8.

See paragraph 1040.

No. of Precept Register .

Court of the Session Judge of Zillah .
(or Commissioner of Division.)

Gopee Nath, Petitioner.

To the Register of the Court of Nizamut Adawlut, Fort William.

Certificate to be submitted when a full return cannot be submitted with the prescribed period.

With reference to the precept of the nizamut adawlut, dated the of , 184 , covering an extract from the court's proceedings of the of 184 , held before Mr. , I hereby certify the accompanying extract from my proceedings of the of , 184 , containing a return to the said precept. I further certify that I propose to submit a further (or full) return on or before the of 184 .

Given under my hand and the seal of the court, this day of 184 .

Criminal Department,
(Division or District,)
the of 184 .

A. B.
Session Judge.

Warrants for Execution of Sentence.

APPENDIX A. No. 34.

See paragraphs 2217 *and* 2227.

No. 1.

Court of Sessions
Trial No. of Calendar
Session

To , Esquire,
Magistrate of .

Warrant of sentence of death.

Whereas at a general jail delivery of for the holden at on the day of the month of in the year 184 , having been convicted of and sentenced by the court of nizamut adawlut to suffer death by being hanged by the neck until he is dead, after which his body unless claimed by his relatives or friends to be either burnt or interred : it is hereby ordered that execution of the said sentence be made and done upon the said on or before the of the month of ; and that you do return this warrant to me with an endorsement attested by your official seal and signature, certifying the manner in which the sentence has been executed, as commanded by the regulations enacted by the governor general in council and now in force. Herein fail not.

Given under my hand and the seal of this court on the day of in the year 184 .

Note. For form of endorsement of death-warrants, see para. 2228.

APPENDIX A. No. 35.

See paragraph 2217.

No. 2.

Court of Sessions
Trial No. of Calendar
Sessions

To , Esquire,
Magistrate of

Warrant of sentence of punishment passed by nizamut adawlut.

Whereas at a general jail delivery of for the holden at on the day of the month of in the year 184 , having been convicted of and sentenced by the nizamut adawlut to : it is hereby ordered that execution of the said sentence be made and done upon the said without delay as commanded by the regulations passed by the governor general in council, and that you do return this warrant when completely executed, with an endorsement attested by your official seal and signature certifying the manner in which the sentence has been carried into execution. Herein fail not.

Given under my hand and the seal of this court this day of in the year 184 .

APPENDIX A. No. 36.

No. 3. *See paragraph* 2217.

Court of Sessions
Trial No. of Calendar
Session

To , Esquire,
Magistrate of

Warrant of sentence of punishment passed by nizamut adawlut when labor is redeemable by a fine.

Whereas at a general jail delivery of for the holden at on the of the month of in the year 184 , having been convicted of and sentenced by the nizamut adawlut to be imprisoned without irons for years from and to pay a fine of rupees on or before the or in default of payment to labor until the fine be paid or the term of his sentence expire : it is hereby ordered, that execution of the said sentence be made and done upon the said without delay as commanded by the regulations, and that you do return this warrant when completely executed, with an endorsement attested by your official seal and signature, certifying the manner in which the sentence has been carried into execution. Herein fail not.

Given under my hand and the seal of this court, this day of 184 .

APPENDIX A. No. 37.

See paragraph 2217.

No. 4.

Court of Sessions
Trial No. of Calendar
Session

To , Esquire,
Magistrate of

Warrant of acquittal passed by nizamut adawlut.

Whereas at a general jail delivery of for the holden at on the day of the month of in the year 184 , charged with having been tried, and sentence of acquittal having been

passed upon the said by the nizamut adawlut: it is hereby ordered, that the said be released, and that you do return this warrant to me, with an endorsement, attested by your official seal and signature, certifying the manner in which the sentence has been executed.

Given under my hand and the seal of this court, this day of in the year 184 .

APPENDIX A. No. 38.

See paragraph 2217.

No. 5.

Court of Sessions
Trial No. of Calendar
Session

To , Esquire,
Magistrate of

Warrant of sentence of punishment passed by sessions court.

Whereas at a general jail delivery of for the holden at on the day of the month of in the year 184 , having been convicted of and sentenced to it is hereby ordered, that execution of the said sentence be made and done upon the said without delay, as commanded by the regulations and that you do return this warrant, when completely executed, with an endorsement attested by your official seal and signature, certifying the manner in which the sentence has been carried into execution. Herein fail not.

Given under my hand and the seal of this court, this day of in the year 184 .

APPENDIX A. No. 39.

See paragraph 2217.

No. 6.

Court of Sessions
Trial No. of Calendar
Session

To , Esquire,
Magistrate of

Warrant of sentence of punishment passed by sessions court, when labor is redeemable by a fine.

Whereas at a general jail delivery of for the holden at on the day of the month of in the year 184 , having been convicted of and sentenced to be imprisoned without irons for years from this date and to pay a fine of rupees on or before the or in default of payment to labor until the fine be paid or the term of sentence expire: it is hereby ordered, that execution of the said sentence be made and done upon the said without delay as commanded by the regulations, and that you do return the warrant, when completely executed, with an endorsement attested by your official seal and signature, certifying the manner in which the sentence has been carried into execution. Herein fail not.

Given under my hand and the seal of this court, this day of 184 .

APPENDIX A. No. 40.

See paragraph 2217.

No. 7.

Court of Sessions
Trial No. of Calendar
Sessions

To , Esquire,

Magistrate of .

Whereas at a general jail delivery of for the holden at on the day of the month of in the year 184 , charged with , having been tried and sentence of acquittal having been passed upon the said : it is hereby ordered, that the said be released and that you do return this warrant to me with an endorsement, attested by your official seal and signature, certifying the manner in which the sentence has been executed.

Warrant of acquittal by sessions court.

Given under my hand and the seal of this court, this day of in the year 184 .

Forms relating to European British subjects.

APPENDIX A. No. 41.

C. O. Sup. Pol. *L. P.* No. 27 of 1844.

See paragraph 3353.

The information and deposition of Doorgapersaud Baboo of Mahomedpore, taken upon oath [or solemn affirmation] by me W. C. B. Esquire, magistrate of Burdwan, and one of her Majesty's justices of the peace, on Friday the thirteenth day of September 1844, who on oath [or solemn affirmation] saith : I am [*here the statement of the witness should be inserted in the first person*].

Information and deposition of prosecutor or witness.

Taken before me the day and year first above mentioned.

W. C. B.

APPENDIX A. No. 42.

C. O. Sup. Pol. *L. P.* No. 27 of 1844.

See paragraph 3353.

The examination of J. S. of Mahomedpore, labourer, taken before me W. C. B. Esquire, magistrate of Burdwan, and one of her Majesty's justices of the peace, on Friday the twentieth day of September 1844 : the said examinant being charged on the oath [or solemn affirmation] of Doorgapersaud Baboo and others with [*here insert the crime with which the prisoner is charged, and the date on which it was committed ; for example's sake the following may answer*] feloniously receiving in concert with Sibchunder Ghose twenty-six Europe imitation shawls of the value of seventy Company's rupees, and one piece of book muslin of the value of five Company's rupees, of the goods and chattels of the said Doorgapersaud Baboo, feloniously stolen and carried away from the shop of the said Doorgapersaud

Examination of the accused.

Baboo, situate in the town of Burdwan, on Friday the thirteenth day of September 1844, well knowing the same to have been feloniously stolen; and duly cautioned, saith :—I [*here the statement of the accused must be inserted in the first person*].

Taken before me the day and year first above mentioned.

W. C. B.

APPENDIX A. No. 43.

C. O. Sup. Pol. *L. P.* No. 27 of 1844.

See paragraph 3353.

To the Foujdaree Nazir of the district of Chumparun, in the Presidency of Fort William in Bengal, and to the keeper of the jail at Mooteeharee.

Warrant of commitment for further examination.

Receive into your custody the body of J. S. herewith sent you, he, the said J. S. being charged before me, W. C. B. Esquire, joint-magistrate of Chumparun, and one of her Majesty's justices of the peace, on the oath of E. F. and others with [*here insert the crime and date*]; and him, the said J. S. safely keep until Monday next, the twenty-third day of September instant, when you are hereby required to bring the said J. S. at the foujdaree court of the district of Chumparun, in the Presidency of Fort William in Bengal, before me or before such others of her Majesty's justices of the peace for the said Presidency of Fort William in Bengal as shall be then and there present, to be re-examined and further dealt with according to law. Herein fail you not.

Given under my hand and seal this twentieth day of September 1844.

W. C. B.

APPENDIX A. No. 44.

C. O. Sup. Pol. *L. P.* No. 27 of 1844.

See paragraph 3353.

Recognizance to prosecute.

Fort William in Bengal. } Be it remembered, that on the twenty-first day of September in the 8th year of the Reign of our Sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith, and so forth, A. B. of [*insert the name of the place of residence*] in the province of Bengal aforesaid, personally came before me W. C. B. Esquire, magistrate of Burdwan, and one of the justices of our said Lady the Queen, assigned to keep the peace within the Provinces of Bengal, Behar and Orissa, and acknowledged himself to be indebted to our said Lady the Queen, in the sum of one thousand Company's rupees of good and lawful money of Bengal aforesaid, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Lady the Queen, her heirs and successors, if the said A. B. shall fail in performing the condition under-written.

The condition of this recognizance is such, that if the above bounden A. B. shall personally be and appear on the first and on the following days of the next sessions of oyer and terminer and jail delivery, to be holden in and for the town of Calcutta and Factory of Fort William in Bengal, and shall then and there prefer a bill of indictment against J. S. for forgery [*or whatever the nature of the charge may be*] and shall then and there give evidence of all such matter and things, as shall have come to his knowledge, and can be objected to the said J. S. on the said bill of indictment, and in case such bill of

indictment shall be found, then if the said A. B. shall prosecute the same with effect, and shall then and there attend from day to day, and shall not depart the court without leave thereof, then this obligation is to be void and of no effect, otherwise to be and remain in full force and virtue.

Taken and acknowledged the day and year first above written before me.

W. C. B.

APPENDIX A. No. 45.

C. O. Sup. Pol. *L. P.* No. 27 of 1844.

See paragraph 3353.

Recognizance to give evidence.

Fort William in Bengal. } Be it remembered, that on the twenty-first day of September in the eighth year of the Reign of our Sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith, and so forth, G. H. of [*all the witnesses' names may be inserted here, but then what follows must be in the plural number*], came before me W. C. B. Esquire, magistrate of Burdwan, and one of the justices of our said Lady the Queen, assigned to keep the peace within the Provinces of Bengal, Behar, and Orissa, and acknowledged himself to be indebted to our said Lady the Queen in the sum of Company's rupees one thousand of good and lawful money of Bengal aforesaid, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Lady the Queen, her heirs and successors, if the said G. H. shall fail in performing the condition under-written.

The condition of this recognizance is such, that if the above bounden G. H. shall personally be and appear on the first and on the following days of the next sessions of oyer and terminer and jail delivery, to be holden in and for the Town of Calcutta, and Factory of Fort William in Bengal, and shall then and there personally attend from day to day to give evidence of all such matters and things as shall have come to his knowledge, and can be objected against [*the name of the prisoner*] on a bill of indictment to be preferred against [*the name of the prisoner*] upon the prosecution of [*the name of the prosecutor*], and if the said G. H. shall then and there attend from day to day, and not depart the court without leave thereof, then this recognizance to be void and of no effect, otherwise to be and remain in full force and virtue.

Taken and acknowledged the day and year first above written before me.

W. C. B.

APPENDIX A. No. 46.

C. O. Sup. Pol. *L. P.* No. 27 of 1844.

See paragraph 3353.

Recognizance of bail.

Fort William in Bengal. } Be it remembered, that on the twenty-third day of September in the eighth year of the reign of our Sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith, and so forth: A. B. and C. D. and E. F. severally came before me W. C. B. Esquire, magistrate of Burdwan, and one of the justices of our said Lady the Queen, assigned to keep the peace within the provinces of Bengal,

Behar, and Orissa, and acknowledged themselves to be indebted to our said Lady the Queen, in the sum of six thousand Company's rupees, that is to say, the said A. B. in the sum of four thousand Company's rupees, and the said C. D. and E. F. in the sum of two thousand Company's rupees each, of good and lawful money of Bengal aforesaid, to be respectively made and levied of their several goods and chattels, lands and tenements, to the use of our said Lady the Queen, her heirs and successors, if the said A. B. shall fail in performing the condition under-written.

The condition of this recognizance is such, that if the above bounden A. B. shall be and appear at the foujdaree court of the district of Burdwan in the presidency of Fort William in Bengal, and shall then and there attend from day to day, to answer to the charge pending against him the said A. B. for forgery [*or as the nature of the case or charge may be*] and shall then and there abide and undergo the order of the said court, and shall not depart the court without leave thereof, then this recognizance to be void and of no effect, otherwise to be and remain in full force and virtue.

Taken and acknowledged the day and year first above written before me.

W. C. B.

APPENDIX A. No. 47.

C. O. Sup. Pol. *L. P.* No. 27 of 1844.

See paragraph 3353.

To the Sheriff of the Town of Calcutta, and Factory of Fort William in Bengal, and to the Keeper of Her Majesty's Prison at Calcutta.

Warrant of final commitment to supreme court.

Receive into your custody the body of J. S. herewith sent you, he, the said J. S. being charged before me, W. C. B. Esquire, magistrate of Burdwan, and one of her Majesty's justices of the peace on the oath [or solemn affirmation] of A. B. and others with [*here insert the crime charged and the date when committed*] and him the said J. S. safely keep until he shall be discharged by due course of law.

Given under my hand and seal this twenty-fourth day of September, 1844.

W. C. B.
Justice of the Peace.

APPENDIX A. No. 48.

See paragraph 3353.

To the Keeper of the House of Correction [*or other place of confinement.*]

Warrant of imprisonment.

Receive into your custody the body of J. S. herewith sent you, he, the said J. S., begin convicted before me, W. C. B. Esquire, one of her Majesty's justices of the peace and magistrate of Burdwan, upon the oaths [*or solemn affirmations*] of two credible witnesses with having on the thirteenth day of September, in the year of our Lord One Thousand Eight Hundred and Forty-four [*here state the offence, as in the conviction, for which see para.* 3380], and him, the said J. S. safely imprison [*or*, safely imprison and keep to hard labor] for the space of two months, unless the said sums shall be sooner paid; when you will bring him again before me in order that he may be discharged by due course of law.

Given under my hand and seal, this twentieth day of September, 1844.

W. C. B.

APPENDIX A. No. 49.

FORMS REGARDING SURETY OF THE PEACE.

Information to require surety to keep the peace.

Be it remembered that on the day of 184 , A. B. of , in the district of , gentleman, came personally before me, W. C. B. Esquire, magistrate of , and one of her Majesty's justices of the peace, and on his oath informeth me that C. D. of , labourer, did on at most violently and maliciously declare and threaten and did also on [*here state the defendant's threats and acts*]; and that from the above premises he, this complainant, is afraid that the said C. D. will do him some grievous bodily harm;* and therefore prays that the said C. D. may be required to find sufficient sureties to keep the peace towards him, this complainant. And this complainant also says, that he doth not make this complaint against, nor require such sureties from, the said C. D. from any hatred, malice, or ill-will, but merely for the preservation of his life and person from injury.

A. B.

Sworn before me the day and year first above mentioned.

W. C. B.

Warrant to be issued thereon.

To E. F., Nazir of the criminal court of , and to all darogahs of police, and other peace officers, and others whom this may concern.

Whereas A. B. of , in the district of , gentleman, hath this day made information on oath before me, W. C. B. Esquire, magistrate of , and one of her Majesty's justices of the peace, that C. D. of , labourer, did on at [*here set forth the complaint as in the above form to the* * *in the past tense, describing the complainant by his name*]; and therefore the said A. B. hath prayed that the said C. D. may be required to find sufficient sureties to keep the peace towards him, the said A. B. I do, therefore, hereby require and command you to apprehend and bring the said C. D. before me, or any other of her Majesty's justices of the peace at their office in aforesaid, to answer the said complaint, and to find sufficient sureties to keep the peace towards all her Majesty's liege people, and especially towards the said A. B., for such term as shall be then enjoined him, and to be further dealt with according to law.

Given under my hand and seal, the day of , 184 .

W. C. B.

Recognizance to keep the peace.

Be it remembered that on the day of , 184 , in the year of the reign of our Fort William in Bengal. } Sovereign Lady Victoria by the Grace of God, of the United Kingdom of Great Britain and Ireland, Defender of the fatih, and so forth, C. D. of , in the district of , labourer, A. S. of the same place, labourer, and B. S. of the same place, labourer, came before me, W. C. B. Esquire, magistrate of , and one of the justices of our said Lady the Queen assigned to keep the peace, and acknowledged themselves to be indebted to our said Lady the Queen, in the sum of [two thousand] Company's rupees, that is to say, the said C. D. in the sum of [one thousand] Company's rupees, and the said A. S. in the sum of [five hundred] Company's rupees, and the said B. S. in the sum of [five hundred] Company's rupees, of good and lawful money of Bengal, to be respectively made and levied of their several goods and chattels, lands and tenements, to the use of our said Lady the Queen, her heirs and successors, if he, the said C. D. shall fail in performing the condition underwritten.

If the party be bound merely to keep the peace for a specified term, the condition will be thus: The condition of this recognizance is such, that if the above bounden C. D. shall keep the peace, towards all her Majesty's liege people, and especially towards A. B. of , in the said district, gentleman, for the term of [twelve calendar months] now next ensuing, then the said recognizance shall be void and of no effect, or else remain in full force and virtue.

If the party be bound to appear at the sessions, the condition of the recognizance will be thus: The condition of this recognizance is such that if the said C. D. shall personally appear at the next sessions of oyer and terminer and jail delivery, to be holden in and for the town of Calcutta and factory of Fort William in Bengal, to do and receive what shall be then and there enjoined him by the court, and in the meantime shall keep the peace towards all her Majesty's liege people, and especially towards the said A. B. of , in the said district, gentleman, for the term of [twelve calendar months] now next ensuing, then the said recognizance shall be void and of no effect, or else remain in full force and virtue.

Acknowledged before me the day and year first above-mentioned.

W. C. B.

To E. F., Nazir of the criminal court of , and also to the darogah of the [criminal jail] of , and others whom this may concern.

Commitment in default of security to keep the peace.

Whereas A. B. of , [*here recite the complaint as in the warrant, ante*] : and whereas the said C. D. was this day brought and appeared before me, W. C. B. Esquire, magistrate of , and one of her Majesty's justices of the peace, at , to answer the said complaint; and I, the said justice, have ordered and adjudged, and do hereby order and adjudge, that the said C. D. shall enter into his own recognizance in the sum of [one thousand] rupees, with two sufficient sureties in the sum of [five hundred] rupees each, to keep the peace towards all her Majesty's liege people, and particularly towards the said A. B. for the term of [twelve calendar months] now next ensuing : and insomuch as the said C. D. hath refused and still refuses to enter into such recognizance, and to find such sureties as aforesaid, I do hereby require and command you, the said nazir, forthwith to convey the said C. D. to the [criminal jail] of , and to deliver him to the darogah thereof with this warrant. And I do also require and command you, the said darogah, to receive the said C. D. into your custody in the said [jail], and him there safely to keep for the space of [twelve calendar months], unless he, in the meantime, enter into such recognizance with such sureties as aforesaid, to keep the peace in the manner and for the term above-mentioned. Herein fail not.

Given under my hand and seal the day of , 184 .

W. C. B.

APPENDIX B.

Registers.

APPENDIX B. No. 1.

Reg. III. 1812, No. 1 ; and C. O. No. 144 of vol. 3, para. 6.
See paragraphs 608, 1870, 2114.

Register of convicts who have broken jail, or have otherwise effected their escape.

Name and cast of the persons who have escaped from jail.	Name of the father.	Supposed age.	Description of his person.	Supposed usual place of residence.	Amount of reward offered for his apprehension.	Date of apprehension, surrender, or ascertained death.	No. of case; the year in which it is preferred; and in what part of the record office the record is to be found.

APPENDIX B. No. 2.

Reg. III. 1812, No. 3 ; and C. O. No. 144 of vol. 3, para. 6.
See paragraphs 608, 1255, 1870.

Register of persons charged with, or suspected of, the commission of specific crimes of a heinous nature, who may have eluded the pursuit of justice.

Name and cast of the persons accused or suspected.	Name of the father.	Supposed age.	Description of his person.	Supposed usual place of residence.	Amount of reward offered for his apprehension.	Date of apprehension, surrender, or ascertained death.	No. of case; the year in which it is preferred; and in what part of the record office the record is to be found.

APPENDIX B. No. 2½.

Reg. XX. 1817, No. 5.

See paragraph 1660.

Register of offenders, who have escaped from jail, or who, being charged or suspected of the commission of specific crimes of a heinous nature, may have eluded the pursuits of justice, and for whose apprehension process may have been issued from the magistrate's court.

Name and cast of the person with a specification whether he may have escaped from jail, or may have been accused, or suspected.	Name of the father.	Supposed age of the offender.	Description of his person.	Supposed usual place of his residence.	Amount of reward offered for his apprehension.	Date of the magistrate's order for the apprehension of the offender.	Date of proclamation.	Date of apprehension, surrender, or ascertained death.

APPENDIX B. No. 3.

Reg. III. 1812, No. 7.

See paragraphs 1876, 1877.

Half yearly return of persons apprehended under the provisions of Regulation III. 1812, by *(name of zumeendar, farmer, local agent or police darogah)* of *(name of estate, farm, or thana)* of *(zillah or city jurisdiction.)*

Numbers and dates of warrants under which apprehended.	Names of persons apprehended.		Date of apprehension.
	Persons who had escaped.	Persons who had eluded the process of the court.	

APPENDIX B. No. 4.

C. O. No. 144 of vol. 3.—A.

See paragraphs 495, 608.

General register of all applications preferred direct to the magistrate of zillah commencing on the 1st January, 184 , and ending 31st December, 184 .

No. of this register.	Name of the applicant.	Date.	Substance of charge.	Order.
1.	Ram Doss,	1st January,	Assault,	Referred to the sudder ameen.
2.	Sheik Coochil,	Ditto,	Wounding with a sword,	Deposition taken, and sent to heinous offence book-keeper.
3.	Imam Deen,	2nd January,	Stopping up a road,	Referred to darogah for report and sent to miscellaneous case book-keeper.
4.	Ramdhun,	Ditto,	Assault,	Referred to principal sudder ameen.

APPENDIX B. No. 5.

C. O. No. 144 of vol. 3.—B.

See paragraphs 495, 608.

General register of all reports received from the police darogahs of zillah commencing the 1st January 184 , and ending .

No. of this register.	Name of Thana.	Date of receipt.	Substance of report.	Order.
1.	Kutwah,	1st January,	Reporting a case of murder in village of Dhuguram,	Sent to "heinous offence" book-keeper. Darogah ordered to submit result of enquiries without delay.
2.	Baupore,	Ditto,	Reporting all well,	Filed in the office.
3.	Bilsah,	Ditto,	Sending a case of cattle-stealing,	Referred to joint magistrate.
4.	Hooghly,	Ditto,	Reporting a burglary in the house of Ramdhun,	Ordered to enquire into the case. Report sent to heinous offence book-keeper.

APPENDIX B. No. 6.

C. O. No. 144 of vol. 3.—C.

See paragraph 495.

Record keeper's register.

1. No. of cases.	2. Nature of case; that is heinous, petty, or under what head.	3. Names of parties.	4. The crime or offence charged.	5. Thana.	6. Month and year.	7. Final order.	8. Record keeper's remarks.
							Placed in rack. No. 1. Bustah No. 4.

APPENDIX B. No. 7.

C. O No. 144 of vol. 3, No. 1.

See paragraphs 495, 608.

Book of heinous offences prescribed by Circular Order, 12th April, 1811.

No. of this register.	Name of prosecutor.	Name of party accused.	Abstract of charge.	Date of filing.	Parties on bail or in jail.	Abstract of order passed.	Final order.
1.	Sheik Coochil,	Ryamooddeen. Mynooddeen.	Wounding with a sword,	1st January,	.....	Warrant issued.	
2.	Rammohun,	.....	Murder of Coochil,	1st January,	.....	Directing enquiry.	
3.	Ramdhun,	.....	Burglary,	1st January,	.....	Darogah to report.	

APPENDIX B. No. 8.

C. O. No. 144 of vol. 3, No. 2.

See paragraph 495.

Petty offence book, prescribed by Circular Order, 12th April, 1811.

No of register.	Name of prosecutor.	Names of parties accused.	Substance of charge.	Date.	Abstract of orders passed.	Final order.
1.	Ulee Buksh,	Hurmohun Dwar kanath,		2nd January,	Summons.	
2.	Shishim,	Ramshaee Toolsee,	Assault,	3rd January,	Summons.	

APPENDIX B. No. 9.

C. O. No. 144 of vol. 3, No. 3.

See paragraph 495.

Book of appeals.

No.	Name of appellant.	Date of filing appeal.	From whose orders appeal preferred	Abstract of orders passed.	Final order.

APPENDIX B. No. 10.

C. O. No. 144 of vol. 3, No. 4.

See paragraph 495.

Book of reference from other districts.

No.	Name of district.	Date of receipt of reference.	Substance of reference.	Substance of orders passed.	Final order passed.

APPENDIX B. No. 11.

C. O. No. 144 of vol. 3, No. 5.

See paragraphs 495, 608.

Book of cases preferred under Act IV. of 1840.

No.	Name of prosecutor.	Name of defendant.	Date of filing petition or of report.	Substance of charge.	Substance of orders.	Final order.

APPENDIX B. No. 12.

C. O. No. 144 of vol. 3, No. 6.

See paragraphs 495, 608.

Miscellaneous matters.

No.	Names of parties.	Date of filing.	Substance of matter.	Substance of order.	Final order.

APPENDIX B. No. 13.

C. O. No. 194 of vol 3.

See paragraphs 348, 608.

Diary of parties and witnesses in attendance in the magistrate's court.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.
					CASE IN WHICH CONCERNED.		NUMBER OF DAYS DETAINED.								
Date of arrival.	Date of deposition, &c.	Date of attestation.	Name.	Designation.	Plaintiff.	Defendant.	1 day.	2 days.	3 days.	4 days.	5 days.	6 days.	7 days.	More than 7 days.	Name of mohurrir taking evidence.
Oct. 5th	5th	6th	Gungaram,	Complainant,	Gungaram,	Imam Buksh,	1	...	...	...	...	...	...	...	Ramchurrun.
„	5th	6th	Rudeh,	Witness,	Ditto,	Ditto,	1	...	...	...	...	..	...	...	Ditto.
„	5th	7th	Imam Buksh,	Defendant,	Ditto,	Ditto,	...	1	...	...	...	...	...	...	Ditto.
„	6th	8th	Roopey,	Petitioner,	Roopey,	Imamee,	...	...	1	...	...	...	...	...	Hurchunder.

This book is always on the magistrate's table in the cutcherry. The nazir fills up the 1st, 4th, 5th, 6th, and 7th columns, whenever a petition is presented, or a case received from the thana; he then fills up the 16th column, and delivers the case to a mohurrir; and, if he does not receive it back ready on the same day, reports accordingly to the magistrate. On receiving it he fills up the 2nd column, and the magistrate signs all the depositions; and when that officer hears and attests the depositions, he signs them again, and causes the 3rd and corresponding columns to be immediately filled up in his own presence.

APPENDIX B. No. 14.

C. O. No. 151 of vol. 3, No. 1.

See paragraphs 608, *and* 1191.

Zillah . Foujdaree Adawlut.

Register of unclaimed property disposable under clause 16, section 16, Reg. XX. 1817.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.
Names of thanas.	Description of unclaimed property.	Date of arrival at the thana.	Date of sale (if sold) in the mofussil.	Date of arrival at the sudder station.	Date of sale at the sudder station.	Price realized by the sale of the property.	Signature of the nazir.	Date on which the price realized was paid into treasury.	Receipt and signature of the treasurer.	Signature of the magistrate or other officer.	Remarks.
											If the property has been made over to any claimant who has appeared, it is to be stated in the column of remarks.
									Total amount, ... 0 0 0 Realized during the month, 0 0 0		

APPENDIX B. No. 15.

C. O. No. 151 of vol. 3, No. 2.

See paragraphs 608, *and* 1191.

Zillah . Foujdaree Adawlut.

Register of lawaris property disposable under sect. 7, Reg. V. 1799.

1.	2.	3.	4.	5.	6.	7.	8.	9.
Names of thanas.	Names of individuals deceased.	Description of property.	Date of arrival at thana.	Date of arrival at the sudder station.	Date of dispatch of property to the civil court.	Signature of the nazir.	Date of receipt given by the civil authority.	Remarks.

APPENDIX B. No. 16.

C. O. No. 167 of vol. 2.

See paragraph 2245.

Register of unexpired sentences.

1.	2.	3.		4.		5.			6.			7.
Names of prisoners.	Date of sentence.	Term of imprisonment.		When the sentence will be expired.		Warrants when received back from jailor or magistrate.			Warrants when returned to the nizamut adawlut.			
		Years.	Months.	Month.	Date and year.	Month.	Date.	Year.	Month.	Date.	Year.	
Gharum,	10th April, 1826,	7		April	10th 1833	April.	12th	1833	...	...	...	*Memo.* Column 6 to be omitted in magistrate's register.
Jubba,	7th Aug. 1833,	Death.		"	"	Sept.	10th	1833	Sept.	12	1833	
Janee,	5th Sept. 1833,	Release.		"	"	Sept.	12th	1833	"	"	"	
Pema,	27th Feb. 1833,	"	6	Aug.	27th 1833	Sept.	20th	1833	"	"	"	
Rambuksh.	3rd Feb. 1833,	"	3	May	3rd 1833	May.	4th	1833	"	"	"	

Note.—In this register prisoners should be entered *under the year in which their sentences expire*, so that a glance over it at the end of each year will show whether any have been by neglect confined beyond their period of sentence. A memorandum of this should be made and signed by the session judge or magistrate at the close of each year. Prisoners sentenced to death or to imprisonment for life, should be entered *in the year in which they are sentenced.*

The register of each court should be confined to the warrants issued from that court. Warrants of magistrates, joint magistrates, and assistants to be returned by the jailor when completely executed, with an endorsement to that effect on the reverse.

APPENDIX B. No. 17.

C. O. Sup. Pol. *L. P.* No. 2 of 1840.

See paragraphs 608, 1552.

Register of police officers deserving of promotion.

1.	2.	3.	4.	5.	6.	7.	8.
District.	Name of police officer with that of his father.	Age.	Rank and designation in the force.	Period of service in the police in its several grades.	For what particular service or meritorious conduct recommended for promotion.	Remarks by magistrate.	Remarks by superintendant of police L. P.

APPENDIX B. No. 18.

C. O. Sup. Pol. *L. P.* No. 16 of 1840.

See paragraphs 608, 1550.

Register of dismissed police officers.

Name of officer.	Rank in the police.	Offence of which guilty and date of commission.	Description of punishment and date of infliction.	General character during his period of service.
Shah Mahomed.	Jemadar.	Neglect in inquiring into a case of burglary, 15th January, 1840.	Fine of 5 Rupees, 25th January, 1840.	Was not active, and appeared wanting in judgment and sound sense.
"	"	Absent without leave, 7th June, 1840.	Forfeiture of half a month's pay, 10th June, 1840.	
"	"	Sending in defendants without any good cause, 14th July, 1840.	Reprimanded and future conduct pointed out to him, 20th July, 1840.	

APPENDIX B. No. 19.

Reg. XX. 1817, No. 6.

See paragraphs 608, 1629, 1661.

Register of village watchmen and alphabetical list of villages.

Names of villages.	Distance and direction from the thana station.	Names of the proprietors or managers, and situated in what pergunnah.	Names of the chokeedars or watchmen attached to each village.	Estimated number of houses in each village.	Remarks.

APPENDIX B. No. 20.

Reg. XX. 1817, No. 7.

See paragraph 1663.

List of the police establishment of the thana of , for the month of .

Number.	Name of each police officer.	Date of appointment.	Date of discharge.	Absent on leave from what date.	Amount of salary due.

APPENDIX B. No. 21.

Reg. XX. 1817, No. 8.

See paragraph 1687.

Statement of dawk chokees established by the landholders, &c. for the conveyance of the public correspondence to and from the thana of , situated at the distance of coss south from the sudder station.

No. of the chokee.	Name of the village or place, where the chokee is established, and in what pergunnah.	Name and residence of the person to whom the papers are to be delivered for despatch.	Names of the dawk peons at each station.	Name of the landholder or local agent, and his place of residence.	Distance of one chokee from another	REMARKS. Containing particulars in regard to the direction of one chookee from another, rivers, ghauts, &c.
1.	Lal Gunj, pergunnah Boosnah.	Manick Mundul of mouzah Lal Gunj.	Kuloo Pheekoo.	Mahomed Shah, zumeendar residing at Moorshedabad.	3½ coss from Chunderpore.	
2.	Phoolpoor, pergunnah Boosnah.	Ramnat Putwaree of mouzah Phoolpoor.	Maun Sing and Ram Sing.	Ramnat, farmer, residing at Natore.	4 coss from Lal Gunj.	South West from Lal Gunj. A nullah between this and the last chokee, fordable during the year.

APPENDIX B. No. 22.

C. O. No. 3077, August 24, 1838 (not among the printed circulars).

See paragraph 608. *These registers are to be kept by the officers in charge of the sub-divisions in the vernacular.*

Mr. Robinson's mode of arranging records.

Note.—The original is slightly altered to make it correspond with the present form of the monthly statements.

A separate almirah or range of shelves is assigned to each thana, and a catalogue of the misls contained in that almirah is prepared. This catalogue has each page appropriated to one of the offences noted in [the magistrate's] statement No. 1; and the heading No. 41 "Crimes and offences not specified above" is divided into

43. Sodomy.
44. Petty affrays and assaults.
45. Bad character or vagrancy.
46. False accusations.
47. Neglect of zumeendars to apprehend criminals.
48. Neglect of chokeedars in giving information of crimes, or other faults.
49. Resistance of process.
50. Contempt of court.
51. Absconding of convicts, and conniving at the same.
52. Misconduct of police officers and amlah.
53. Concealment of crimes by zumeendars and others bound to give information.
54. Abuse and slander.
55. Cases under Act IV. 1840.
56. Cases connected with the payment, appointment, &c. of chokeedars.
57. Trespass.
58. Inquests.
59. Kidnapping.
60. Complaints under Reg. VII. 1819.
61. Fraud.
62. Poisoning or injuring animals.

&c.

Each page is superscribed with one of these offences; as *e. g.* thus :

Thana Tirwah.

No. 3. *Murder—other cases.*

Year.	Parties.		Crime and place of crime.		Final order by magistrate.	Final order by session judge.	Final order by nizamut adawlut.	No. of criminals not apprehended.	No. of criminals whose names are unknown.	Remarks.
	Plaintiff.	Defendant.	Village.	Crime.						

The misls are put up in cloths or bustahs, and are arranged in the order of statement No. 1. The bustahs are legibly superscribed with the No. of crimes they contain. The misls of one kind of crime are put up in a separate bundle or mootee, and a convenient number of bundles are tied up in each bustah. Thus : in the right-hand upper corner of the almirah of thana Tirwah, there is placed the first bustah superscibed in Persian

Bustah of Thana Tirwah.

Nos. 1 *to* 4.

No. 1. *Murder by thugs.*
No. 2. *Murder on the river.*
No. 3. *Murder—other cases.*
No. 4. *Wounding with intent to murder.*

and so on throughout the 62 headings as given above.—Each bundle is superscribed in Persian with the year and class of crime to which it refers ; *e. g.*

Bundle of Thana Tirwah, 1833.

No. 3. *Murder—other cases.* 2 *misls.*

Each misl is superscribed in Persian on the envelope with the crime,—the authority passing the last order—and the place where the crime occurred ; *e. g.*

No. 3. *Wilful murder.—Joint magistrate.—Mouzah Kudowlee.* 1 *case.*

Each misl has of course its proper ferist or list of the papers it contains regularly numbered in a series.

In the record office are deposited only those papers on which definitive orders have been passed. In cases pending, the different classes of crimes are divided among the different amlah, and deposited in separate boxes, of which the amlah in charge has the key ; and for the safe custody of the papers that person is responsible. Thus, one box contains in four compartments the pending cases from Nos. 1 to 4, and these are under charge of the deputy serishtadar. He keeps the following register of the cases under his charge :

Thana, chokee, and place where crime occurred.	Names of parties.	Date of and kind of crime.	Date of case coming on the file of the court.	Value of property stolen.	Value of property recorded.	Officer who decides.	Cause of delay of final order.	Date of committal.	Date of being before session judge.	Date of return from session judge, and number of leaves in misl.	Date of return to mohafez-dufter.

If any case is required from the record office, the person, in whose charge that class of case is, gives a receipt to the record-keeper, which is deposited in the bundle in the place of the misl taken away, and remains there till the misl is returned. The receipt specifies the number of papers contained in the misl. It is the business of the serishtadar continually to inspect the above register, and to see that no negligence occurs in bringing forward the cases; and to submit once a week to the magistrate an abstract showing the number of cases pending, the number in which the last order has remained unexecuted for 8 days, and the number in which the last order remains unexecuted notwithstanding the issue of a second order and the expiry of 16 days. In the first class of cases he applies to the magistrate for a second order; and in the second class for a fine on the person charged with the execution of the order. At the end of the month the different officers close their registers, and open new ones for the next month, in the beginning of which are entered the undecided cases of the former month; and on the 10th of each month a statement of the business pending at the close of the former month is submitted in English to the magistrate. A separate almirah with its separate catalogue is kept for each of the following departments of business:

1. Jail.
2. Treasury.
3. Ferries.
4. References to other courts and officers.
5. General orders from magistrates.

APPENDIX B. No. 23.

C. O. No. 134 of vol. 1.

See paragraph 2025.

Daily report of prisoners in the jail of Zillah , for the month of .

	Nizamut Adawlut.				Sessions Court.				Magistrate.						
Date.	Perpetual imprisonment.	Ditto temporary.	Security required.	Referred.	Temporary imprisonment.	Security required.	Mad.	Postponed.	Temporary imprisonment.	Security required.	Mad.	Committed.	To be tried.	Dewanny prisoners.	Total.

APPENDIX B. No. 24.

C. O. No. 134 of vol. 1.

See paragraph 2025.

Daily hospital report for the month of .

Date.	Patients brought in.	Total.	Died.	Discharged.	Remaining.

APPENDIX B. No. 25.

Reg. XXII. 1816.—C.

See paragraphs 1605, 1623.

Register of assessment to be kept by chokeedaree bukshee.

Name of mohullah.	Names of punchaet.	Names of persons assessed.	Cast or profession.	Monthly rates of assessment.	Total amount of assessment in each mohullah.	Names of chokeedars.	Amount of their monthly wages.	Overplus remaining for contingencies.	Remarks, and if no punchaet appointed, to be noticed here.

APPENDIX B. No. 25½.

Reg. XXII. 1816.—D.

See paragraph 1608.

Monthly statement of defaulters to be prepared by chokeedaree bukshee.

Name of mohulla.	Names of defaulters.	Cast or profession.	Amount assessed.	Amount defalcation on the 5th.	Amount voluntarily paid previously to sale.	Remarks, showing when, and in what manner realized; and, if by distress and sale, the date and particulars thereof.

APPENDIX B. No. 26.

C. O. No. 4 of vol. 3.

See paragraphs 608, 927.

Register of fines imposed and realized by the magistrate of zillah [or by the judge of zillah].

Date.	No. of fine.	Names of persons fined.	On what account fined.	Amount of fine.	Amount realized.	Date.	Signature of nazir.	Signature of treasurer.	Signature of magistrate.	If not realized or if remitted, ground to be entered here.
				Rs	Rs.					
October 23rd	206	Ramdhun.	Assault.	5	5	October 23rd	D.E.	F.G.	A.B.C.	
Ditto,	207	Shureeut.	Contumacy.	10	...	.....	..	...	...	Sent to jail for 10 days in lieu offine.
Ditto,	208	Sheik Edu.	Affray.	50	50					
Ditto,	209	Tumeezoodeen.	Neglect of duty.	25	25	.....	..	...	...	Fine re-paid, having been remitted by the superintendent of police.

Abstract. Fines imposed during the month of ,..... 100
Realized,.... 50
Remitted, ... 30—80

Under realization by the nazir, 20

APPENDIX B. No. 27.

See paragraph 608.

Book of abstract daily receipts and disbursements of the magistrate's court, of zillah .

1847, March.	1.				2.				3.				&c.
Receipts.													
Collector of	1500	...	...	...	.....	...	..	...	.....	...	...	.	
Foujdaree deposits, ...	.....	...	...	...	.....	...	.	...	10000	...	..	...	
Ferry fund, ...	.....	...	...	.	.....	...	...	...	.....	...	...	...	
Chokeedaree collections, ...	.....	.	...	..	.....	...	...	...	.....	...	...	...	
Profit and loss, ...	.....	.	...		.....	...	...	...	2	10	0	0	
Fines, ...	30	8	..	...	47	0	0	0	3	4	0	0	
Amount sale of unclaimed property,	.....	...	...	...	4	10	0	0	.....	...	...	...	
General Book, ...	.....	...	...	...	.....	...	...	...	.....	...	...	...	
Refunds and re-credits, ...	.....	..	...	...	.....	...	...	...	.....	...	...	...	
Convict labor fund, ...	.....	...	...	...	.....	...	...	...	.....	...	...	...	
&c.													
Total, ...	1530	8	0	0	51	10	0	0	10005	14	0	0	
Cash balance, ...	491	2	1	16	2021	5	1	16	1537	9	6	16	
Inefficient balance, ...	10705	6	5	16	10705	6	5	16	11241	1	0	16	
Grand Total,.	12727	0	7	12	12778	10	7	12	22784	8	7	12	
Disbursements.													
Collector of	... ..	...	...	..	.....	...	...	...	10000	...	...	...	
Foujdaree deposits, ...	.....	...	...	...	.....	...	...	...	. ....	..	...	...	
Ferry fund, ...	.....	...	...	...	.....	..	.	..	.....	...	...	...	
Chokeedaree collections, ...	.....	.	...	...	.....	...	...	.	.....	..	...	...	
Fines,...	.....	...	...	...	.....	...	...	.	100	...	...	..	
Amount of unclaimed property, ...	.....	...	...	...	.....	...	...	...	.....	...	...	...	
Refunds and re-credits,... ...	.....	...	...	...	.....	...	.	...	.....	...	...	...	
Convict labor fund, ...	. ....	...	...	...	.....		...	..	.....	...	...	...	
Diet rations of prisoners, ...	.....		...	...	.....	.	...	...	368	15	5	10	
Miscellaneous contingencies, ...	.....	5	...	...	535	5	7	0	.....	...	...	...	
&c.													
Total, ...	.....	5	0	0	535	5	7	0	10468	15	5	10	
Cash balance, ...	2021	5	1	16	1537	9	6	16	1074	8	1	6	
Inefficient balance, ...	10705	6	5	16	10705	11	5	16	11241	1	0	16	
Grand Total,.....	12727	0	7	12	12778	10	7	12	22784	8	7	12	
Inefficient balance, ...	10705	6	5	16	10705	11	5	16	11241	1	0	16	
Advanced this day, ...	.....	5	0	0	535	5	7	0	368	15	5	10	
Total,.....	10705	11	5	16	11241	1	0	16	11610	0	6	6	
Deduct inefficient balance,	.....	...	..	...	.....	...	...	...	3530	8	11	2	
Remaining balance, ...	10705	11	5	16	11241	1	0	16	8079	7	7	4	

APPENDIX B. No. 28.

See paragraph 608.

Register of subsistence money paid to witnesses by government.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.
Number of cases.	Nature of charge.	Name of prosecutor.	Name of defendant.	Date of attendance of prosecutor.	Date of attendance, and names of the witnesses.	Date of departure.	Number of days dieting.	Amount of each day's diet	Total expenses.	Grand total.

APPENDIX B. No. 29.

See paragraph 608.

Register of subsistence money deposited by parties to suits.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10
Number of deposits.	Name of plaintiff.	Date of deposit.	Amount of deposit.	Attendance of witnesses.	Amount of dieting.	Amount of surplus in hand.	Date of sentence or final order.	Date of return of money.	Remarks.

APPENDIX B. No. 30.

See paragraph 608.

Book of prisoners' rations.

Saturday, the day of 184 . corresponding with the day of 125, B. S.

Total No. of prisoners in confinement yesterday.	Names of prisoners admitted into jail this day.	Total.	Names of prisoners released from jail this day.	Names of prisoners deceased this day.	Names of prisoners escaped this day.	Number of prisoners receiving rations this day.	Rate of daily cost of rations of each prisoner.							Aggregate cost of prisoners' rations.							
							Rupees.	Annas.	Pies.	Quarters.	Krantees.	Chittacks.	Gundahs.	Rupees.	Annas.	Pies.	Quarters.	Krantees.	Chittacks.	Gundahs.	
838	Sibchunder. Ghorachand. 2	840	Nideeram Roy. Muthoor Mohun. Ramchand. 3	.....	.....	Laboring prisoners receiving common rations, 768	...	1	4	3	...	6	...	67	1	2	1	3	...	...	*Note.* 20 gundahs = 1 chittack. 16 chittacks = 1 krantee. 5 krantees = 1 quarter. 4 quarters = 1 pie. 12 pies = 1 anna. 16 annas = 1 rupee.
						Laboring prisoners receiving flour rations, 36	...	1	10	...	...	6	...	4	2	...	2	3	8	...	
						Total laboring prisoners, 804	...	...	...	...	...	...	...	71	3	3	...	1	8	...	
						Non-laboring prisoners, 33	...	1	...	...	...	...	...	2	1	...	...	...	...	...	
						Total prisoners, 837	...	...	...	...	...	...	...	73	4	3	...	1	8	...	

APPENDIX C.

APPENDIX C. No. 1.

C. O. No. 136 of vol. 3. No. 1.

See paragraph 264.

Form of proceeding of conviction.

Proceeding of the foujdaree court of zillah dated .

Present W. C. B. Esquire, *Magistrate.*

A. B. Prosecutor. } *versus* { C. D. Defendant.

Charge. Burglary in the house of the prosecutor, and theft of property of the value of 50 rupees.

The prisoner having been arraigned on the above charge, and pleaded not guilty, the following witnesses were examined for the prosecution.

E. F. G. H. } Who were present when the prisoner was apprehended in the act of committing the offence.

I. J. K. L. } To the fact of the property, found on the prisoner, belonging to the prosecutor.

M. N. O. P. } To the prisoner's character.

The undermentioned witnesses were examined for the defence.

Q. R. S. T. } To prove an alibi set up by the prisoner.

U. V. W. X. } To the prisoner's character.

The charge having been proved by the evidence of the witnesses for the prosecution, who were present when the prisoner was apprehended in the act of committing the crime with which he is charged, and to the discovery, on the person of the prisoner, of property belonging to the prosecutor,—the value of such property not exceeding 50 rupees;

It is hereby ordered, that the prisoner be confined in the criminal jail of this district for a period of two years from this date, and be kept to hard labor in irons.

APPENDIX C. No. 2.

C. O. No. 138 of vol. 3. No. 2.

See paragraph 265.

Form of proceeding of acquittal.

Proceeding of the foujdaree court of zillah dated

Present W. C. B. Esquire. *Magistrate.*

A. B. Prosecutor. } *versus* { C. B. Defendant.

Charge. Burglary in the house of the prosecutor, and theft of property of the value of 50 rupees.

E. F. Witnesses examined.

Whereas the charge against the prisoner has not been proved by the evidence adduced on the part of the prosecutor,

It is hereby ordered, that the prisoner be released.

APPENDIX C. No. 3.

C. O. No. 138 of vol. 3. No. 3.

See paragraphs 266, 660.

Form of proceeding of commitment to the sessions court.

Proceeding of the foujdaree court of zillah dated .

Present. W. C. B. Esquire. *Magistrate.*

A. B. Plaintiff. } *versus* } C. D. Defendant.

Charge. Murder of .

The following witnesses were examined on the part of the prosecutor ; viz.

E. F. G. H. } Eye witnesses to the murder.

I. J. K. L. } Witnesses to the fact of a previous enmity between the prisoner and the deceased.

M. N. O. P. } Witnesses to the confession of the prisoner before the darogah.

The following witnesses were examined for the defence;

Q. R. S. T. } To an alibi pleaded by the prisoner.

With reference to the evidence for the prosecution, it is hereby ordered that the prisoner be committed to take his trial in the sessions court of the district, charged with the murder of ; that the prosecutor and witnesses be bound over to attend in the sessions court ; and the prisoner be questioned as to any evidence he may wish to have summoned on his trial.

APPENDIX C. No. 4.

General form of oath to be administered to an English witness.

You shall true answer make to all such questions as shall be demanded of you; so help you God.

Or,

The evidence you shall give in this case shall be the truth, the whole truth, and nothing but the truth; so help you God.

Note.—While this form is repeated to the witness, he is to hold the Bible in his hand, and at the close of it to kiss the book, thereby appealing to Heaven for the truth of what he is about to disclose. But it is not absolutely necessary to use this form, if the witness has a conscientious objection to the mode, or professes a religion which binds him by a different obligation; for oaths are to be administered to all persons according to their opinions, and as it most affects their consciences. A Quaker or Moravian required to give evidence in a criminal case may, instead of taking an oath in the usual form, be permitted to make a solemn affirmation or declaration in these words: "I, A. B., do solemnly, sincerely, and truly declare and affirm"; which has the same force and effect in all courts of justice, and other places where by law an oath is required, as if such Quaker or Moravian had taken an oath in the usual form. *Chitty's Burn's Justice.*

APPENDIX C. No. 5.

C. O. Nos. 44 and 48 of vol. 3.

See paragraphs 358, 1720.

Form of affirmation to be made by Mahomedan deponents.

میں ایمان سے خدائے تعالیٰ کے حضور میں اقرار کرتا ہوں کہ اِس مقدمہ میں میں سچ کہونگا بالکل جو جانتا ہوں سچ کہونگا اور سیوائے سچ کے کچھہ نہیں

APPENDIX C. No. 6.

C. O. Nos. 44 and 48 of vol. 3.

See paragraphs 358, 1720.

Form of affirmation to be made by Hindoo deponents.

میں دھرم سے پرمیشر کے حضور میں اقرار کرتا ہوں کہ اِس مقدمہ میں میں سچ کہونگا بالکل جو جانتا ہوں سچ کہونگا اور سیوائے سچ کے کچھہ نہیں

আমি পরমেশ্বর কে প্রত্যক্ষ জানিয়া ধর্ম্মতঃ প্রতিজ্ঞা করিতেছি যে এক্ষনে জাহা কহিব তাহা সত্য ও সম্পূর্ণ সত্য হইবেক এবং সত্য ভিন্ন হইবেক না ইতি

APPENDIX C. No. 7.

See paragraph 545.

OATH OF ALLEGIANCE.

Form of oaths to be taken by justice of peace.

I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to her Majesty Queen Victoria. So help me God.

A. B.

Sworn in court by the said A. B. this day of in the year of our Lord 184 , at before me,

W. C. B.

Magistrate (or as the case may be).

OATH OF OFFICE.

I, A. B., do swear that, as justice of the peace for the Provinces dependent on Fort William in Bengal, in all articles in the Queen's Commission to me directed, I will do equal right to the poor and to the rich after my cunning, wit, and power, and after the laws and customs of the realm and statues thereof made; that I will not be of counsel of any quarrel hanging before me; and the issues, fines, and amerciaments, that shall happen to be made, and all forfeitures which shall fall before me, I will cause to be entered without any concealment or embezzling; that I will not let for gift or other cause, but will well and truly do my office of justice of the peace in that behalf; that I will take nothing for my office of justice of the peace to be done, but such salary or fees as shall be expressly allowed me by lawful authority; and that I will not direct or cause to be directed any warrant by me to be made to the parties, but will direct them to bailiffs or constables lawfully appointed or other indifferent persons to do execution thereof. So help me God.

A. B.

Sworn in court by the said A. B. this day of in the year of our Lord 184 , at before me,

W. C. B.

Magistrate (or as the case may be).

APPENDIX C. No. 8.

C. O. No. 234½ of vol. 2.

See paragraph 670.

To the session judge of .

SIR,

I beg leave to report to you that I have this day committed E. F. and G. to the sessions court on a charge of murder.

Form of letter from magistrate to session judge intimating the commitment of prisoners to the sessions;

2. The prosecutor and the witnesses both for the prosecution and the defence, can be in attendance on the 10th instant, or any day after that date that you may be pleased to fix.

3. I request you will have the goodness to intimate to me on what day the parties shall be directed to attend on your court.

I am Sir,
Your obedient servant,
A. B.
Magistrate.

1st June 1847.

To the magistrate of .

SIR,

In reply to your letter of 1st instant, I beg to inform you that I shall be ready to proceed to the trial of the prisoners on the 11th instant, and request the favor of your causing all the persons concerned to be in attendance at the sessions court house at 10 o'clock A. M. on that day.

and of the judge's reply.

I am, Sir,
Your obedient humble servant,
C. D.
Session Judge.

2d June 1847.

APPENDIX C. No. 9.

C. O. No. 54 of vol. 2.

See paragraph 574.

Form of calendar of commitment.

Calendar of prisoners committed or held to bail by the to take their trial before the in the month of

No. of Calendar.	Number of prisoners.	Names of the parties and the names of their fathers.	Abstract of the charge and date on which it was preferred.	Date of the apprehension of offenders.	Names of the Prosecutor's Witnesses.								Abstract of the examination, grounds, and date of commitment for trial.	Number of prisoners held to bail.	Names of the witnesses on the part of the prisoners.	
					Witnesses to the fact.	Witnesses to the apprehension.	Witnesses to the sooruthal.	Witnesses to confession in the mofussil.	Witnesses to confession at the foujdaree.	Witnesses to finding and identity of property.	Circumstantial evidence.	Witnesses to character.			Witnesses to defence.	Witnesses to character.

APPENDIX C. No. 10.

C. O. No. 54 of vol. 2, paras. 2 and 3.
See paragraphs 767, 959.

Form of the record of a criminal trial, held before a session judge.

N. B. The proceedings are all to be written on country paper 12½ *by* 9½ *inches.*

List of the papers according to their numbers of the trial No. of the sessions of zillah for the month of 184 .

1. Examination of the prosecutor.
2. Pleading of prisoner Bindrabun Das.
3. Pleading of prisoner Hurdyal.
4. Deposition of A. B. witness to the occurrence.
5. Deposition of C. D. ditto.
6. Deposition of E. F. ditto.
7. Deposition of G. H. witness to the sooruthal.
8. Deposition of I. K. ditto.
9. Sooruthal.
10. Deposition of the civil surgeon.
11. Translation of ditto.
12. Deposition of L. M. witness to the confessions made in the mofussil.
13. Deposition of N. O. ditto.
14. Mofussil confession of prisoner Bindrabun Das.
15. Persian translation of ditto.
16. Mofussil confession of prisoner Hurdyal.
17. Persian translation of ditto.
18. Deposition of P. R. witness to the confessions made in the foujdaree court.
19. Deposition of S. T. ditto.
20. Foujdaree confession of prisoner Bindrabun Das.
21. Persian translation of ditto.
22. Foujdaree confession of prisoner Hurdyal.
23. Persian translation of ditto.
24. Deposition of U. V. witness to the apprehension of prisoners.
25. Deposition of W. L. ditto.
26. Deposition of J. S. witness to the finding and identity of the property.
27. Deposition of A. M. ditto.
28. Defence of prisoner Bindrabun Das.
29. Defence of prisoner Hurdyal.
30. Deposition of B. P. witness on the part of prisoner Bindrabun Das.
31. Deposition of C. N. ditto.
32. Deposition of H. R. witness on the part of prisoner Hurdyal.
33. Deposition of S. D. witness on the part of both prisoners.
34. Question proposed to the law officer.
35. Reply of the law officer.
36. Second question proposed to the law officer.
37. Reply of the law officer.
38. Order.
39. Calendar.

RECORD.

Court of the session judge of zillah . Trial No. of the sessions for the month of , 184 . Case No. of the magistrate's calendar for the month of , 184 .

Government. Prosecutor.

1. Bindrabun Das, son of Heeranund, aged 36 years, } Prisoners.
2. Hurdyal, son of Govind Pershad, aged 50 years, }

Charge, Murder.

L. S A. B.

(True copy.) *Session Judge.*

[*Note. The above heading is to be in English; the list of papers given above, and what follows, in the vernacular. They are translated here from the form annexed to the Circular Order No.* 54 *of vol.* 2.]

Record of trial No. held in the court of sessions of zillah before Mr. A. B. session judge, and in the presence of M. A. law officer: case No. of the magistrate's calendar for the month of , 184 : on the day of , 184 :

Note.—If the trial is not concluded in one day, it is to be specified in this place.

Government Prosecutor.

1. Bindrabun Das, son of Heeranund, aged 36 years, } Prisoners.
2. Hurdyal, son of Govind Pershad, aged 50 years, }

Charge, Murder.

Date on which the offence was perpetrated, 184 .

On the day of , 184 , corresponding with the day of , 125 , B. S. both parties were produced in court, at the time appointed, together with the weapon, and articles of property.

Description of the weapon. In this place is to be inserted a description of the weapon, or other instrument, said to have been used in the perpetration of the act charged, mentioning its length, breadth, and weight, the place where, and the circumstances under which it was found. [*See para.* 769]. As, *e. g.* 1. an iron bound club 4 hands long ; of the thickness towards the handle of a finger and thumb, and towards the lower end bound with iron to the thickness of two fingers. The weapon was stained with blood, and was found in the thatch of the prisoner Bindrabun's house.

Description of the articles. In this place is to be inserted a description of the articles of property, mentioning the numbers and marks, and the place where and the circumstances under which each was found. As *e. g.* 2. A piece of an old dhotee stained with blood, found in the house of the prisoner Hurdyal, pointed out by himself. 3. A pair of silver bangles found buried under the wall of the house of the prisoner Hurdyal, pointed out by himself, weighing .

1. *Deposition of the prosecutor.* When the government vakeel is prosecutor, a copy of his written statement is to be inserted in the record ; and if any other person is prosecutor, his evidence is to be taken on oath or solemn affirmation.

2. *Pleading of the prisoner Bindrabun.* The prisoner is to be called upon to plead "guilty" or "not guilty" to the charge. [*See para.* 776.]

3. *Pleading of the prisoner Hurdyal.*

4. *Deposition of A. B. witness to the occurrence.* If there should be any discrepancy between the evidence of the witness in the sessions court, and before the magistrate, the session judge is to question him thereupon, and to record his answers. [*See para.* 783.]

5. *Deposition of C. D. ditto.*

6. *Deposition of E. F. ditto.*

7. *Deposition of G. H. witness to the sooruthal.* After the witness has given his evidence, the written sooruthal containing an account of the body is to be read over to him, and he is to be called upon to verify his signature to it.

8. *Deposition of I. K. ditto.*

9. *The original sooruthal.* After the sooruthal has been proved, the original is to be placed on record, and a copy under the signature of the session judge and seal of the court is to be inserted instead of the original in the magistrate's file. [*See para.* 956.]

10. *Deposition of the civil surgeon, and native doctor.*	The deposition of the surgeon who examined the body,—or if he is absent that of the native doctor on oath [or solemn affirmation]—and a translation into Oordoo, if it has been given in English or any other language, are to be placed on record.
11. *Oordoo translation of the above.*	
12. *Deposition of L. M. witness to the confessions of the prisoners made in the mofussil.*	The evidence of these witnesses is to be taken as to the time and manner of the confession being made, and as to the tenor of it; and afterwards the original confession of the prisoner is to be read over to each witness, and he is to be called upon to verify his signature to it.
13. *Deposition of N. O. ditto.*	
14. *The original mofussil confession of the prisoner Bindrabun.*	After the confession of the prisoner has been proved, the original is to be filed on the record, and a copy under the signature of the session judge and the seal of the court is to be inserted in the magistrate's file.
15. *Oordoo translation of the above.*	
16. *The original mofussil confession of the prisoner Hurdyal.*	
17. *Oordoo translation of the above.*	
18. *Deposition of P. R. witness to the confessions made in the foujdaree court.*	See the remarks made on No. 12.
19. *Deposition of S. T. ditto.*	
20. *Original foujdaree confession of the prisoner Bindrabun.*	See the remarks made on No. 14.
21. *Oordoo translation of the above.*	
22. *Original foujdaree confession of the prisoner Hurdyal.*	
23. *Oordoo translation of the above.*	
24. *Deposition of U. V. witness to the apprehension of the prisoners.*	See the remarks made on No. 4.
25. *Deposition of W. L. ditto.*	
26. *Deposition of J. S. witness to the finding and recognition of the property.*	
27. *Deposition of A. M. ditto.*	
28. *Defence of prisoner Bindrabun.*	After the close of the evidence for the prosecution, the defence of the prisoners and their mofussil and foujdaree confessions are to be read over to them, and they are to be asked whether they made the confessions under improper influence, by promises, intimidation, or threats: and the prisoners are to be allowed to call any witnesses.
29. *Defence of prisoner Hurdyal.*	
30. *Deposition of B. P. witness on the part of the prisoner Bindrabun.*	See the remarks made on No. 4.
31. *Deposition of C. N. ditto.*	
32. *Deposition of H. R. witness on the part of the prisoner Hurdyal.*	
33. *Deposition of S. D. witness in behalf of both prisoners.*	

34. *Question proposed to the law officer.* The law officer is to be asked whether the crime charged has been proved against the prisoners or not.

35. *Reply of the law officer.* At the bottom of the futwa, the law officer is to attest it with his seal and signature.

36. *Second question proposed to the law officer.* The law officer is then to be questioned as to the proper sentence to be passed on the prisoners.

37. *Reply of the law officer.* See remarks on No. 35.

38. *Order of the session judge.* The session judge is to record his own opinion as to the sentence which should be passed on the prisoners: and is to note the date on which the proceedings closed.

APPENDIX C. No. 11.

Reg. XX. 1817, No. 1.

See paragraph 1576.

Certificate of despatch of burkundaz by darogah.

Name of the burkundaz.	Case.	Date and time of despatch from the thana.	Date and time of arrival at the magistrate's court.	Date and time of departure from the magistrate's court.	REMARKS.
Mootee Sing.	Murder Motee Ram *vs.* Nuttoo & others.	10th March, at the fifth hour of the day.	12th March, at the third hour of the day.	13th March, at the fourth hour of the day.	

APPENDIX C. No. 12.

Reg. XX. 1817, No. 2.

See paragraphs 1167, 1735, 1792.

Chalan or despatch of prisoners from the thana of Zillah of .

No. of the chalan.	Name and residence of the complainant or prosecutor.	Names of the prisoners and their place of residence also the name of the pergunnah and of the landholder, or farmer.	Abstract of the offence and the date of its occurrence and also the date of the urzee, complaint or information.	Date and time of the apprehension of the accused.	Where apprehended and by whom.	Date and time of the arrival of the accused at the thana.	Date and time of his despatch to the sudder station and under charge of what burkundaz.	Names of the witnesses.	REMARKS.
1	Ramdyal, inhabitant of Mouza Seral Akel.	1 Jeesook, inhabitant of mouza Jaunsut, pergunnah Dulmow, in the estate of Ramsing, zumeendar. 2 Matab, inhabitant of mouza Paharee, zumeendar, and pergunnah as above.	Burglary and wounding on the 5th of April 1846. Complaint made on the 6th of April.	On the morning of the 15th of April.	By Muttoo chokeedar in the village of Jaunseet.	On the evening of the 15th of April.	On the evening of the 16th of April under the custody of Ramsing and Motee Sing, burkundazes.	Bood Sing, Kaorah Rutnah, Khodabuksh.	

APPENDIX C. No. 13.

Reg. XX. No. 3, 1817.

See paragraphs 1177, 1657.

Chalan or despatch of property from the thana in the district of . List of property found in the house of and despatched to the foujdaree court, under charge of on the corresponding with

Number of the chalan.	Number affixed to to each article.	Name or description of the article.	Weight.	Estimated value.	In what place found.	Date and time of finding.	Names and residence of the witnesses in whose presence the property was found.	Name of the person on whom or in whose premises the property was found.	Abstract particulars stating what property is claimed as plundered or stolen, and what is deemed suspicious.

APPENDIX C. No. 14.

Reg. XX. 1817, No. 4.

See paragraphs 1658, 1664, 1673.

Statement of crimes of a heinous nature, ascertained to have been committed or attempted within the limits of the thana of during the month of .

No.	Crimes.	Committed.	Attempted.	Number of offenders concerned.	Number apprehended.	Remarks.
1	Dacoitee, attended with murder,					
2	Ditto, with wounding,					
3	Simple dacoitee,					
4	River dacoitee,					
5	Wilful murder,					
6	Maihem, or malicious wounding,					
7	Highway robbery by footpads, attended with murder, wounding, or other circumstances of aggravation,					
8	Simple highway robbery by footpads,					
9	Highway robbery by horsemen,					
10	Cattle stealing,					
11	Homicide,					
12	Affrays and riots of a serious nature,					
13	Burglary, attended with murder or wounding or other circumstances of aggravation,					
14	Simple burglary,					
15	Thefts, exceeding 10 rupees,					
16	Ditto under 10 rupees,					
17	Receiving stolen property,					
18	Arson,					
19	Counterfeiting the coin, or uttering base coin,					
20	Suicide,					

N. B. The number of accidental deaths, whether occasioned by falling into rivers, lakes, or wells; by wild beasts, venomous animals, or other causes; also any considerable mortality, whether proceeding from famine, or other cause; and any extraordinary event which may be brought to the knowledge of the police officers during the month; are to be noticed at the foot of this statement.

APPENDIX C. No. 15.

Reg. XX. 1817, No. 21.

See paragraph 1802.

NOTICE.

All Europeans, not being in the service of Her Majesty or of the Honorable Company, are hereby enjoined on the requisition of the darogah of police, within the limits of whose jurisdiction they may be residing, to report themselves in writing to the magistrate of the district, on a separate paper, drawn out after the form subjoined:

(To be signed by the Magistrate.)

Statement of Europeans, residing within the jurisdiction of the thana of .

Name.	Place of residence.	Native country.	Employment.	Year of arrival in India.	Authority for residing in India, and date.	Authority for residing in this district, and date.	Remarks.

APPENDIX C. No. 16.

C. O. No. 218 of vol. 2.

See paragraph 2289.

Statement of a prisoner recommended for release in consequence of bodily infirmity.

1.	2.	3.	4.	5.	6.	7.	8.	9.
Name of prisoner.	Sex.	Age.	Cast and profession.	Crime.	Sentence and date.	By what authority passed.	Unexpired period.	Nature of complaint in consequence of which the prisoner is recommended for release.

ON THE REVERSE.

10.	11.	12.
Declaration of the civil surgeon.	Opinion and remarks by magistrate.	Ditto by session judge.

APPENDIX C. No. 17.

C. O. No. 105 of vol. 3.

See paragraph 2120.

Descriptive roll of convict sentenced to imprisonment for life (or years) who escaped from confinement on the of 184 .

Name of prisoner.	Cast & age.	Residence.			Crime and date of sentence.	Whence escaped.	Remarks.
		Village.	Pergunnah.	District or country.			
							To contain description of fugitive's person, notice of any reward offered for his apprehension, or other particulars.

Magistrate's office,
Zillah the of 184 .

A. B.
Magistrate.

APPENDIX C. No. 18.

C. O. Nos. 183 and 204, of vol. 2.—A.

See paragraph 2257.

Statement of convicts sentenced by the session judge, without reference to the nizamut adawlut, to imprisonment in banishment at a jail delivery of , for the month of , 183 .

1.	2.	3.	4.	5.	6.	7.	8.
No.	Names of convicts and of their fathers.	Cast.	Age.	Crime.	No. of each convict in the jail delivery statement No. 1.	Date of sentence of session judge.	Sentence.

APPENDIX C. No. 19.

C. O. Nos. 183 and 204 of vol. 2.—B.

See paragraph 2257.

Statement of convicts sentenced by the session judge, without reference to the nizamut adawlut, to imprisonment in banishment at a jail delivery of , for the month of , 183 .

1.	2.	3.	4.	5.	6.	7.	8.	9.
No.	Names of convicts and of their fathers.	Cast.	Age.	Crime.	No. of each convict in the jail delivery statement No. 1.	Date of sentence of session judge.	Date of receipt by the magistrate of the warrant of the session judge.	Sentence.

APPENDIX C. No. 20.

C. O. Nos. 183 and 204 of vol. 2.—C.

See paragraphs 2257, 2268.

Statement of convicts sentenced by the nizamut adawlut to temporary imprisonment in banishment, or to perpetual imprisonment in the jail at Allipore, or transportation beyond sea.

1.	2.	3.	4.	5.	6.	7.	8.
No.	Names of convicts and of their fathers.	Cast.	Age.	Crime.	Date of sentence of nizamut adawlut.	Date of receipt of warrant of session judge for carrying the sentence into execution.	Sentence.

APPENDIX C. No. 21.

C. O. Nos. 7 and 25 of vol. 1, and No. 20 of vol. 3.

See paragraph 2271.

List of prisoners sentenced by the nizamut adawlut to be transported.

Names of prisoners and of their fathers.	Description of prisoners.	Crime.	Date of sentence.	Period of transportation.

APPENDIX C. No. 22.

C. O. No. 295 of vol. 1.

See paragraph 2242.

Certificate, showing when the sentence of the undermentioned prisoner will expire.

1.	2.	3.	4.	5.
Name of prisoner.	Crime of which he has been convicted.	Period of imprisonment to which he is sentenced.	Date of the warrant.	Date on which the period of his sentence will expire.

APPENDIX C. No. 23.

C. O. Sup. Pol. S. P. No. 10 of 1842.

See paragraph 1915.

Register of Ministerial Officers dismissed.

1.	2.	3.	4.	5.	6.	7.
Name of dismissed officer.	Name of his father and place of his birth.	Office held by him.	Cause of dismissal.	Date of dismissal.	Description of his person, noticing any peculiarities of speech, form, or feature.	Remarks.

APPENDIX C. No. 24.

C. O. No. 73 of vol. 3.

See paragraph 1905.

Return of the names of serishtadar, paishkar, and nazir of the district of ——.

Name of the officer.	Appointment held by him.	When nominated, and by whom.	Age.	Number of years in the public service.	Schedule of the landed property possessed by him.	General remarks as to qualifications, &c.
A. B.	Serishtadar.	In 1825 by Mr. C. D.	45	23	One talook at a jummah of 350 Rs. in zillah E.	
	Paishkar.					
	Nazir.					

APPENDIX C. No. 25.

C. O. Nos. 115 and 125 of vol. 6.

See paragraph 1906.

Ministerial officers of the Civil Court of Zillah dismissed from office for misconduct.

1.	2.	3.	4.	5.	6.	7.
Name of the employee.	Name of his father.	Office held by him.	Cause of dismission.	Date of dismission.	Description of his person.	Remarks.

APPENDIX C. No. 26.

C. O. S. D. A. Nos. 34 and 193 of vol. 3.

See paragraph 1951.

Report of revision of securities of ministerial officers having charge of money, or property.

Report of the result of the inquiry as to the sufficiency of the security given by the officers of the court, made in the month of December 184 , under the Circular Order of the Sudder Dewanny and Nizamut Adawlut, dated the 23rd September, 1831.

Name and designation of the officer required to give security.	Amount of security required.	Names of the sureties with the date of their engagement.	Names of new security, the old sureties having been changed.	Remarks.

Certified that I have revised the securities of the officers above mentioned, and that I consider them good and sufficient.

(Signed) A. B.

Judge or Magistrate (as the case may be.)

APPENDIX C. No. 27.

C. O. No. 188 of vol. 3.

See paragraph 1955.

Formula for preparation of security bonds.

میں کہ ولد کوٹھي ساکن کا ہوں
جو پیشگاہ صاحب جج عدالت دیواني ضلع سے بابت خزانہ متعلقۂ عدالت مذکورہ کے اِس
محکمے کے خزانچي سے بتعداد روپئے کے تصرف ضامني مطلوب ہی اِس واسطے میں برضا اور
رغبت مسمی کا کہ فی الحال بعہدۂ خزانچي گري محکمۂ مذکورہ کے مقرر ہی متکفل ہوتا ہوں
اِس اِقرار سے کہ جب کبھي منجملہ روپیہ یا لوٹ و غیرہ نقد اور جنس محولہ خزانچي مذکور کے از روي
حساب کے کچھہ باقي سرکار کي ذمہ مشار الیہ کے نکلے تو میں ضامن بلا عذر اور حجت زرد مگي خزانچي
مذکور کو اپنے پاس سے ادا کروں اور جایداد مصرحۂ ذیل کو کہ مالیتي روپیہ کي بلا خلش
ازان خاص مجھہ ضامن کي ہی بطریق نشان ضمانت کے مکفول کرتا ہوں اور میں یہہ وثیقہ بطور تصرف
ضامني کے لکھہ دیتا ہوں کہ عندالحاجت کام آوے
المرقوم

APPENDIX C. No. 28.

C. O. No. 104 of vol. 3.

See paragraphs 2350, 3434.

Description roll of Insanes forwarded to the Insane Hospital of from zillah .

1. *	2.	3.	4.	5.	6.	7.	8.
Name of patient.	Names of near relatives or members of his family.	Place of residence, including names of village, pergunnah, and zillah.	Cast, occupation or trade.	Age.	List of articles as cloths, &c. belonging to the patient and sent with him to the asylum.	Circumstances that led to the patient having been put under restraint and sent for confinement in the asylum.	Remarks. A brief history of the case, the supposed cause of insanity, &c.

* Column 3.	Column 4.
Place of residence, profession, and age.	List of patient's property sent with him to asylum as well as of any sold to meet charges, with amount realized by such sale.

In the case of Insane European British subjects, sent under Circular Order, No. 85, dated 30th April 1841 [*v. para.* 3430] columns 3, 4, 5, and 6 may be compressed into two columns, as shewn in the margin.*

APPENDIX C. No. 29.

See paragraph 2338.

Medical Code. Form A.

Monthly report of the patients in the Insane Hospital at for the month of .

Names.	Age.	Occupation.	Admitted.	Discharged.	Died.	Remarks.

Surgeon in charge.

Abstract of patients in the Insane Hospital for the month of

	Remaining.	Admitted.	Total.	Discharged.	Died.	Remaining.	Remarks.
Males. Females.							
Total.							

Surgeon in charge.

APPENDIX C. No. 30.

See paragraph 2356.

Table shewing in detail the expenditure in the Insane Hospital under the Presidency of Fort William for the year 184 .

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.
Station.	Daily average number of patients.	Total number of patients dieted per annum.	Total expense for diet per annum.	Total expense for clothing per annum.	Total expense for servants per annum.	Total expense for rent and repair of Hospital.	Total miscellaneous expenses as per detailed account.	Grand total of expense per annum.	Expense of diet per man per mensem.	Expense of clothing per man per mensem.	Expense of servants per man per mensem.	Total expense of each patient per mensem.	Expense of half caste patients.
			Rs. A P	Rs. A P	Rs. A P	Rs. A P	Rs. A P	Rs. A P	Rs. A P	Rs. A P	Rs. A P	Rs. A P	Rs. A P

Daily ordinary allowance for each patient.

Rice.	Dall.	Fish.	Vegetables.	Salt.	Oil.	Ghee.	Dhuye.	Curry Stuff.	Fire Wood.	Betel leaf or pawn.	Betel Nut.	Tobacco.
Chts.	Chts.	Chts.	Chts.	Chts.	Chts.	Chts.	Chts.	Cutcha	Seers.	No.	No.	Chts.

Milk.	Flour.	Sugar.	Meat.	Vegetable.	Fowls.	Fruits.
For sick and weak patients, quantity undefined.						

Nominal Return of Servants attached to the Institution.

No.	Names.	Description.	Rate of pay per mensem.			Amount per annum.		
			Rs.	As.	P.	Rs.	As.	P.

Account of Miscellaneous Contingencies during the year of 184 .

	Articles.	Amount.		
		Rs.	As.	P.

APPENDIX C. No. 31.

C. O. No. 61 of vol. 3.

See paragraph 3429.

Form of engagement to be taken from parties, who undertake the safe custody of insane persons.

Whereas the court of nizamut adawlut (or sessions, *as the case may be*) did by their warrant under date the of 184 , order and direct that A. B. convicted of having committed the act of while in a state of insanity, should be kept in safe custody until his relations or friends should furnish security to the amount of Company's rupees to take proper care of the said A. B. and further bind themselves to prevent the said A. B. from committing any act injurious to the person or property of any one, and further until the said court of nizamut adawlut (or sessions) should be satisfied that the said A. B. might be delivered over to his relations or friends without danger to the community: we, the undersigned, C. D. of and E. F. of do hereby engage and bind ourselves and heirs in the sum of Company's rupees to take proper care of the said A. B. and to prevent the said A. B. from committing any act injurious to the person or property of any one; in default whereof, we do hereby acknowledge ourselves and heirs to have forfeited to Government the sum of Company's rupees

and for the non-fulfilment of this our engagement, the aforesaid sum shall be levied from us and our heirs, and from our property, agreeably to Section 4, Regulation VI. 1818. Provided, however, that it be optional to us or our heirs, to obtain a release from this engagement, on making over the person of the said A. B. to the magistrate, whenever we may so desire. For the performance of the above conditions we pledge the undermentioned property. Dated in presence of

The property pledged in this deed belongs to the sureties, and is worth rupees.

L. S. Nazir of the Court.

میں زمیدار اور نمبردار موضع
پرگنه ضلع کے هوں

چوں دیوانگي کے حالت میں قتل کروانے کے سبب سے صدر نظامت کے
حاکموں کے تجویز سے قید تها اور اب بموجب میرے إستدعاء کے جو صاحب رپوٹ کے
ذریعه سے بهیجا گیا تها حکام مفخر الیهم کے حکم سے میري ضمانت پر رهائي پائي إس لئے اقرار کرتا هوں اور
لکهه دیتا هوں که اگر سے دیوانگي کے حالت میں کوئي حرکت ایسي ظاهر هو که
حبس سے کسیکو یا کسیکے جایداد کو کچهه ضرر پهنچے تو میں اور میرے وارث دو سو روپیه بطور جرمانه کے
صاحب مجسٹرٹ کے خزانه میں داخل کرینگے اور حبس وقت مجهے یا میرے وارث کو إس ضمانت سے اپنے
برأت منظور هوگي تو همکو إختیار حاصل هی که مذکور کو صاحب مجسٹرٹ کے سپرد
کرکے اپنے برأت کروالیں ورنه یهي وثیقه ضمانت برقرار رهیگا اور زمیداري جسکي تفصیل نیچے لکهي هی
مکفول رهیگي فقط

تفصیل

لکهے هوئے تاریخ مهینه سنه

লিখিতং শ্রী জমিদার ও নম্বরদার মৌজে
পরগনে জেলা জামিননামা পত্রমিদং কার্য্যন
ঞ্চাগে উনমাদ সময়ে কাটিয়াফেলিবার জন্য সদর নেজামতের হাকি
মানদিগের তজবিজে কয়েদ ছিল আর এইক্ষনে আমার প্রার্থনামতে জাহার রিপোট
দ্বারায় পাঠানগিয়াছিল উক্ত হাকিমানদিগের হুকুমানু
সারে আমার জমানতিতে খালাস পাইল অতএব একরার করিতেছি আর লিখিয়াদিতেছি
জদ্যপি মজকুর হইতে উনমত্ত ভাবে কোন কর্ম্ম যে যাহাতে কেহোকে

এবং কাহার জায়দাদের কোন নকসান পৌঁছে তবে আমি এবং আমার ওয়ারিস দুই সও টাকা জরিমানা সাহেব মেজেষ্ট্রেটের খাজানাতে দাখিল করিবো ও যে সময় আমাকে কিম্বা আমার উত্তরাধিকারিকে এই জামিনি হইতে মুক্তহওয়া প্রয়জন হইবেক তখন আমাকে ক্ষমতা আছে যে উক্ত মেজেষ্টর সাহেবের নিকট অর্পণ করিয়া মুক্ত হইব নতুবা এই জামিনি বাহাল থাকিবেক আর জমিদারী যাহার তপশীল নিচে লেখা আছে বন্ধক থাকিবেক ইতি।

তপশীল।

সন তারিখ

APPENDIX C. No. 32.

C. O. No. 62 of vol. 3.

See paragraph 3429.

Form of sentence to be adopted in cases of persons convicted of having committed any penal act while in a state of insanity.

The court of nizamut adawlut (or sessions, *as may be*) finds that the said A. B. committed the said act while laboring under insanity, and, acquitting him of the charge, directs that he be kept in safe custody in some suitable place of confinement, until his relations or friends shall furnish security to the amount of Company's rupees to take proper care of the said A. B. and to prevent the said A. B. from committing any act injurious to the person or property of any one, and until the court of nizamut adawlut (or sessions) may be satisfied that the said A. B. may be delivered over to his relations or friends without danger to the community.

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APPENDIX D.

Session Judge's and Magistrate's Monthly and Annual Statements.

GENERAL RULES.

See C. O. No. 98 of vol. 3.

3. To ensure any practical value in these returns, care and attention in their preparation, and unabated vigilance in their supervision, are absolutely essential. Your duty, in revising the magistrate's statements will be, not only to see that they are technically accurate, and that no part of the information they are expected to contain is wanting, but to ascertain, as far as they supply means of judging, whether the several officers subordinate to you have been assiduous in the discharge of their duties. You will notice any irregularity that may appear on the face of the statements, taking such immediate steps as consist with your competency to correct the same, calling for explanation on any points that may require it, and briefly stating on the return, under the head of remarks, the nature of any orders which you may have issued to the magistrate or his subordinates.

4. The above observations apply with equal force to all returns, monthly and yearly, submitted through your office. Your annual report on the administration of criminal justice should, besides, advert to the following general points.

5. Too exclusive stress appears to have been heretofore laid on the proportion borne by acquittals to convictions, in the number of persons apprehended on criminal charges, as well as in cases of commitment to the sessions, viewed as a criterion for estimating the efficiency of the administration of a district;—the recognized principle having been, that any considerable disproportion between the number of persons apprehended in a zillah in any month, and the number whose cases the magistrate has been able to prosecute to punishment or commitment, must be regarded as presumptively showing that a great proportion had been subjected to seizure without reasonable grounds; a rule which, though abstractedly true, is open, when adopted as an invariable test for judging of the efficiency or otherwise of a system, to the objections, on the one hand, of its causing a magistrate to desire the conviction and punishment of the parties tried and finally disposed of in his own court, in order to show fair returns; and, on the other, of inducing the same officer to abstain from the commitment or to resist the apprehension, in the progress of an investigation, of all persons of whose conviction at the sessions he is not before certain; and of favoring the concealment and suppression of offences by the darogah of police from his over-caution not to send in persons without a certain quantum of proof to convict them, and his apprehension of being censured for so doing. Though, therefore, when the acquittals may much exceed the convictions, cause for enquiry is doubtless shown, which it should be your duty to institute, and the result of which you should note, yet you ought not to assume as disparaging to the system of a district a circumstance which may admit of satisfactory explanation, nor, on the other hand, pronounce a preponderance of convictions to indicate successful management,

without first ascertaining how many judgments by the magistrate were appealed to and reversed by the session judge, or in how many cases the punishment on conviction was so light as to render it not worth while to appeal, and what was the issue of the commitments made to your court.

6. In reciting the detail of orders confirmed, modified or reversed by your court, in cases carried up in appeal by parties dissatisfied with the magistrate's decision, you will state what opinion of the general character of the proceedings of that officer, or the authorities subordinate to him, such revision has enabled you to form. Any other circumstances, which may appear to you worthy of being noted concerning this branch of your controlling duties, will be acceptable to the Court as a further means of estimating the efficiency of the magisterial body, and the success of their administration.

7. The opinion which you may form of the proceedings of the magistrate and his subordinates, from the result of the commitments made to your court, should be recapitulated in your report, with such prominent reference to particular cases, whether convictions, acquittals, or commitments cancelled during the year, as may serve to illustrate your remarks.

8. In reviewing the performances of the year, you will not fail to advert to the share taken by the several officers subordinate to the magistrate in the disposal of fouzdaree business, and to the manner in which they have severally discharged their duties. The magistrate should therefore be required to report specifically on these points, with reference to the joint magistrate and assistants (if any) under him, and to the native judges and law-officers. The services rendered in this department by the native judges should be distinctly brought into view, and the result of the appeals from their orders noticed by the magistrate.

9. The considerations in the foregoing paragraph, involving the nature and extent of the auxiliary agency in the criminal department, connect themselves closely with a subject to which your best attention should be directed, and which should be noticed in your report, viz. the long, moderate, or short duration of a criminal case, as affecting the convenience of parties and witnesses therein, and as indicative of a sound and effective system or the reverse. When therefore the average number of days during which cases were under trial in a district, appears excessive, or when great variation of time may be known to exist between one year or district, and another, the causes should be carefully investigated, and the principle of calculation tested, that is to say, whether the period is computed from the date of apprehension by the police (as it should be) or from the date of arrival at the sudder station of the magistrate.

10. As respects your own court, particulars will be expected of the extent of the use of the jury or assessor system in criminal trials, and the degree of success attending it, of the mode of selecting such agency, (to illustrate which, a new form No. 13 has been devised); and of the defects or abuses found or suspected to prevail in making use of it, with your opinion of the best remedy.

11. Besides the points noted, the Court request that you will bring to their notice whatever you may consider worthy of remark either in the laws in force, or in the instruments for administering them, comprehending such information of the condition of the district under you, as local experience and observation will readily supply, but to convey which the most elaborate figured statements would be inadequate.

12. In order to ensure the requisite information being furnished irrespectively of changes of officers, the Court direct that whenever a session judge may deliver over charge of his office preparatory to any thing beyond a temporary absence, he shall place on record a minute, containing particulars of the nature aforesaid, and his opinion on the several points to which allusion has been made, for the use of his successor, and eventually for submission to the Court.

13. A supply of blank lithographed forms of each description of statement sufficient for immediate use, is herewith forwarded; and you will in future indent on the Court for every fresh supply you may require, making such timely applications as to admit of the forms reaching you before those last furnished are entirely exhausted, so as to obviate delay in the submission of the statements at the prescribed period, or the necessity of having recourse to manuscript forms.

List of Statements.

SESSION JUDGE'S STATEMENTS.

No. 1. Statement of persons brought to trial, convicted, acquitted, and referred.
„ 2. Detail of headings 41 and 42 of statement No. 1.
„ 3. Statement of prisoners detained on requisition of security.
„ 4. Statement of appeals preferred from the magistrate's and joint magistrate's orders.
„ 5. Abstract of sessions operations.
„ 6. Statement of prisoners punished without reference.
„ 7. Register of criminal trials referred to the Nizamut Adawlut.
„ 8. Statement of prisoners acquitted by the session judge.
„ 9. Register of criminal trials, for the submission of which to the Nizamut Adawlut orders have been received during the month.
„ 10. Calendar of trials postponed.
„ 11. Annual statement of persons confined in jail on requisition of security for good conduct.
„ 12. Statement of the average time occupied in the disposal of cases.
„ 13. Particulars regarding persons employed as punchayet, assessors, and jury, under Regulation VI. of 1832.
„ 9 A. Statement of appeals from the decisions of the assistant, &c. to be submitted where there may be two or more magistrates under the same session judge.

MAGISTRATE'S STATEMENTS.

No. 1. Parts 1 to 10. Statement of crimes committed, persons under trial, convicted, committed, and acquitted, during the month or year.
„ 2. „ 1 and 2. Detail of headings 41 and 42 of statement No. 1.
„ „ „ 3. Disposal of the prisoners and casualties.
„ „ „ 4 and 5. Persons in custody in default of security for good conduct.
„ „ „ 6. Persons in custody in default of security to keep the peace.
„ 3. „ 1 and 2. Prisoners under commitment when the statement closed.
„ 4. Abstract statement of summary suits for forcible dispossession, under Act IV. of 1840.
„ 5. Statement of prisoners whose cases were under reference to the Nizamut Adawlut.
„ 6. Abstract statement of criminal business disposed of and pending.
„ 7. Abstract of the calendar of persons convicted, committed, and acquitted by the magistrate, joint magistrate, &c.
„ 8. Average period which intervened between the date of apprehension or summons and disposal of the cases in the magistrate's court.
„ 9. Statement of the appeals preferred from the orders of the assistant, principal sudder ameen, &c.

SESSION JUDGE'S RULES.

SESSION JUDGE'S STATEMENT No. I.

MONTHLY AND ANNUAL.

PART I.

Officers Employed.

1. The rules detailed in paragraphs 1 to 5 of the remarks relating to the magistrate's statements, regarding the reports to be made and the forms to be observed on the occasion of changes of officers, will be equally applicable to the session judges.

2. Whenever a session judge delivers over charge of the current duties of his office to an officer not authorized to act as judge, he will call the attention of the relieving officer to the rules which define and limit the functions he is competent to discharge, as well as to the preparation and transmission of such statements and reports as the session judge may, under the rules in force, be required to submit to the Nizamut Adawlut, or to Government, as the case may be.—[*See paras.* 758 *to* 760.]

Columns 1, 2, 3 *and* 4.

3. These columns should present a transcript of columns 22, 23 and 24, of the statement relating to the period preceding that under report.

Column 5.

4. This column should be an exact counterpart of column 12, part 1, of the magistrate's statement No. 1, part 1.

5. Until the receipt of the roobakaree, which the magistrate is required, by paragraph 24 of the rules prescribed for his guidance, to send at the close of each month to the session judge, that officer should not prepare his statement No. 1.

6. Session judges are required, on first taking up a trial, carefully to compare the written charge on which the prisoner is committed, with the facts of the case as stated in the magistrate's roobakaree of commitment, and, in that stage of the proceedings, to cause the latter to rectify errors or supply omissions. When, therefore, it may be necessary to direct any alteration of the charge on which a prisoner may have been committed, the session judge will distinctly indicate, in his order to the magistrate, the specific heading and number under which the case should be included in his statement No. 1, part 1; and the session judge will postpone entering the case in his own statement No. 1, until he receives intelligence from the magistrate, of the order having been carried into execution.—[*See paras.* 687 *and* 688.]

7. A case is to be considered as pending before the sessions court, from the date of the commitment, of which the magistrate is required to give immediate notice to the session judge. The case should be regularly entered in the calendar of postponed trials, until finally disposed of by an order for conviction or acquittal, or by a reference to the Nizamut Adawlut. The same rule will apply whether the decision of the case may have been delayed, in consequence of further proceedings having been called for, or owing to the session judge not having entered upon it, or not having had time, after commencement, to complete it before the close of the month, or by the operation of any other cause.

Columns 6 *and* 7.

8. Cases remanded for further investigation or from other cause, and the persons appertaining thereto, will be entered in these columns.

9. Whenever a case originally referred to or called for by the Court, has been sent back to a session judge, he will report in the next letter submitting his monthly jail delivery statements, whether the further enquiry has been completed or not, and, if not, explain the causes which have prevented its completion; and he will continue to do so every month, until the further investigation has been completed, and the proceedings transmitted to the Court, which fact will also be duly noticed.

Columns 8 *and* 9.

10. Will be filled up in accordance with paragraph 16 of the magistrate's rules.

Column 10.

11. Will show the aggregate of columns 3, 4, 5, 7 and 9.

Columns 11 *and* 12.

12. It has been determined that, under the spirit of the regulations in force, session judges are competent, under certain circumstances, to cancel commitments made by the magistrates of their respective zillahs; but they are required to use the greatest caution in exercising this power, and, on each occasion of having recourse to it, to submit an English report, detailing their reasons for following that course, to the Nizamut Adawlut.—[*See paras.* 690 *et seq.*]

Columns 13 *and* 14.

13. The entries in these columns should be made in accordance with the principle laid down in paragraph 9 of the rules applicable to the magistrate's statements.

Columns 15 *and* 16.

14. Cases regularly referred for the final orders of the Nizamut Adawlut, under the law, should be exhibited in these columns, but not those which may have been called for by the Court.

Columns 17 *and* 18.

16. Session judges will notice, under the head of "Remarks," whenever the number of persons acquitted may greatly exceed the number of persons convicted, adding a brief statement of the probable causes which may have conduced to such a result.

Column 21.

18. The principle laid down in paragraph 28 of the magistrate's rules will regulate the entries in this column.

Columns 22, 23 *and* 24.

19. The principle contained in paragraphs 29, 30, and 33, of the magistrate's rules, should be followed, so far as they are applicable, in filling up these columns.

PART II. UNDER TRIAL.

20. The entries under this head will, during the month and at the close, be governed by the principle laid down in paragraph 74 of the magistrate's rules.

PART III. Convicted and Sentenced.

21. The 1st and 2nd of the items, in the detail of years, given in this part, are intended to provide for cases in which the session judge may direct an additional period of imprisonment, in lieu of corporal punishment, beyond the extreme limit of imprisonment which he is competent to award under the law.

22. The total of this part should correspond with the total of convictions in column 14, part 1.

PART IV.

23. In this part will be entered the total amount of fines imposed, under Regulation II. of 1834, during the period to which the statement has reference, and the whole amount of fines realized under the Regulation cited, in whatever month they may have been imposed.

PART V.

25. The session judges, who have more than one magistrate or joint magistrate possessing separate jurisdiction, subject to their authority, will, with statement No. 1, which includes the commitments of all the lower tribunals, send a separate statement for each magistracy or joint magistracy, in order that, in the event of any discrepancy, it may readily be traced to the zillah in which it occurred, and by a reference to the proceedings of that district be immediately corrected.

SESSION JUDGE'S STATEMENT No. II.

MONTHLY AND ANNUAL.

PARTS I. and II.

26. The entries in these parts will be governed by the principle laid down in paragraphs 61 and 62 of the magistrate's rules.

SESSION JUDGE'S STATEMENT No. III.

MONTHLY AND ANNUAL.

PART I.

27. This part will be filled up monthly and annually.

PART II.

28. It will not be necessary to fill up this part in submitting the annual statements, but the information indicated by the headings should be given every month, and the number of persons should correspond with the number shown in part 1.

SESSION JUDGE'S STATEMENT No. IV.

MONTHLY AND ANNUAL.

Columns 3 *to* 10.

29. Columns 3 to 10 should furnish a record of all appeals from orders of magistrates, passed in criminal cases, in which the defendants may have been summoned or apprehended, and which have been entered by that officer in the current or preceding month's statement No. 1.

Columns 11 *to* 18.

30. These columns will be appropriated to the exhibition of appeals of every description from orders of the magistrates, which under the law are cognizable by session judges, comprehending all cases not susceptible of entry in the magistrate's statement No 1.

SESSION JUDGE'S STATEMENT No. V.

MONTHLY AND ANNUAL.

Abstract of Session Operations.

31. The entries in the first column will represent the number of cases on the file of the sessions court in the course of the month, the number decided during that period, and number pending at its close. The entries in column 2 will correspond with the aggregate of columns 3 and 4, the totals of columns 5, 7, 9, 10, 12, 14, 16, 18 to 21, and the aggregate of columns 23 and 24 of statement No. 1, part 1, and the total of column 3, with the aggregate of columns 2 and 3, heading No. 5, statement No. 1, part 2.

SESSION JUDGE'S STATEMENT No. VI.

MONTHLY.

Column 1.—*Prisoners punished without reference to the Nizamut Adawlut.*

32. The object of column 1 (the numbers entered in which should represent the numerical order in which the trials were decided at any given jail delivery) is to enable the court to identify a case in statements Nos. 6, 7 and 8, in which some of the prisoners may have been convicted and others acquitted or referred: the number borne by any case of this mixed character will, accordingly, be the same in each of the statements.

Column 2.

33. In column 2 should be inserted the number borne by the prisoner in the session judge's record of trial, and, being intended more precisely to indicate the individual regarding whom explanation may be required by the superior Court, on inspection of the statement, or whose cases may be called for, the greatest accuracy is essential in the entries of this column.

Column 3.

34. Column 3 is inserted for the purpose of tracing the case in the session judge's statement No. 1: accordingly, the number entered in this column will correspond with the number of the offence under which the prisoners may have been brought on in statement No. 1. The total number of persons shown in this statement should correspond with the number entered in column 14 of the session judge's statement No. 1.

SESSION JUDGE'S STATEMENT No. VII.

MONTHLY.

Columns 1 *to* 3.—*Criminal Trials regularly referred to the Nizamut Adawlut.*

35. The remarks contained in the three preceding paragraphs apply to the first three columns of this statement also. Those cases alone, in which the session judges are not competent under

the law to pass a final sentence, but are required to submit the case for the final orders of the Nizamut Adawlut, are to be entered in this statement. Cases which may be called for by the Court on inspection of the monthly returns, or on the presentation of a petition, will not be entered in this statement.

Columns 15 *and* 16.

36. The final roobakaree of the trial of a case should invariably record the order for referring the case to the superior Court; and the date of such roobakaree should be entered in the first of these two columns; and in the second should be entered the date of the letter which accompanies the reference to the Nizamut Adawlut.

37. Session judges will enter the particulars in the first 16 columns of this statement, and leave the remaining columns to be filled up in the office of the Nizamut Adawlut.

SESSION JUDGE'S STATEMENT No. VIII.

MONTHLY.

Prisoners acquitted by the Session Judge.

38. The principles contained in paragraphs 32, 33, and 34, apply equally to the first three columns of this statement, the total number of persons exhibited in which should correspond with the total of column 18 of session judge's statement No. 1, part 1.

39. Instances having occurred of functionaries in charge of the office of the session judge, forwarding statements of prisoners punished without reference, or acquitted by the session judge, with the column of "explanation and remarks" blank, in consequence of the absence of the session judge on leave; the Court direct that the session judges will in all possible cases prepare the statements before they avail themselves of their leave, or furnish the officer in charge with a certificate of the cause of their inability to do so, to be submitted with the statements.

SESSION JUDGE'S STATEMENT No. IX.

MONTHLY.

Cases called for by the Nizamut Adawlut.

40. In this statement will be entered all cases submitted to the Nizamut Adawlut in conformity to special calls made for their transmission, as distinguished from such cases as are regularly referred under the law, which are entered in statement No. 7.

41. The principles contained in paragraphs 32, 33, and 34, have application to columns 1 to 3 of this statement likewise. Columns 1 to 17 will be filled up by the session judge, and the remaining columns in the office of the Nizamut Adawlut.

Column 16.

42. In filling up this column, the session judge will be careful to distinguish between calls made by letter and those made by precept, thus:

By letter dated 9th September 1839, No. 1760.

By precept dated 10th September 1839, No. 602.

SESSION JUDGE'S STATEMENT No. X.

MONTHLY.

Postponed Trials.

43. All trials in which the final sentence has not been passed up to the close of the month, should be entered in this statement, under the rule laid down in paragraph 7. Such entry should be regularly repeated until they may have been finally disposed of by an order for conviction or acquittal, or by a reference to the Nizamut Adawlut. The total number of persons, as shown in this statement, should correspond with the total number contained in columns 23 and 24 of the session judge's statement No. 1, part 1, and with heading 3, columns 2 and 3, part 2, of the same statement, and with the total of column 3 of the magistrate's statement No. 3, part 1.

44. The session judge will annex his remarks, explanatory of any delay that may have occurred in disposing of the commitments.

45. It being necessary to provide against the prolonged confinement of prisoners, in cases postponed by session judges, and also to afford sufficient time to procure the attendance of the necessary witnesses, the Court direct that no criminal trial shall be postponed by a session judge beyond the session of jail delivery which may be held next after the expiration of the period of six months, from the date of commitment, except when, for special reasons, the session judge may be of opinion that it should be again postponed, when he will report the circumstances under which it has already been postponed, and the grounds on which he has formed his opinion, for the orders of the Court.

SESSION JUDGE'S STATEMENT No. XI.

ANNUAL.

46. This statement calls for no remark.

SESSION JUDGE'S STATEMENT No. XII.

ANNUAL.

47. In this statement will be entered all cases recorded as disposed of in statement No. 3, but not the appeals from the magistrate and his subordinates. The headings of the several columns sufficiently indicate their application, and render any rules unnecessary.

SESSION JUDGE'S STATEMENT No. XIII.

ANNUAL.

48. This statement is intended to exhibit the principle of selection of individuals to act as jury or assessors, under Regulation VI. of 1832, in the conduct of criminal trials, by a reference to the rank, profession, and other similar particulars, of persons so selected, calculated to illustrate

the working of the system, and the degree of success attending the practical application of the law.

SESSION JUDGE'S STATEMENT No. IX. A.

MONTHLY AND ANNUAL.

49. Session judges with more than one magistrate subordinate to them, will embody the information in the several returns No. 9 of the magistrates, in the form given in statement No. 9 A, for submission to the Nizamut Adawlut; and session judges with only one magistrate under them, will require that officer to submit two copies of No. 9, one of which will be recorded in the sessions court and the other submitted to the Court.

GENERAL REMARKS.

50. It is incumbent on session judges carefully and promptly to revise the statements submitted to them by the magistrates, and immediately to notice any irregularity or excess of power exhibited in those returns, calling for, and demanding, explanations when necessary, and pointing out any errors that may be apparent in them; and in forwarding the explanations of the magistrates or joint magistrates, session judges must invariably state whether they consider them to be sufficient or otherwise.

51. In regard to the statements submitted to the Nizamut Adawlut through the session judges, those officers should not consider themselves as merely the channel of transmission. The statements, after revision, should not only convey the necessary local information, but afford proof of the revising officer's attention having been vigilantly directed to the proper use of the information so supplied, which consists in the timely notice of those errors or excesses of authority that it may bring to light; and the Court request, therefore, that the session judges will note upon the statements any orders they may have issued in regard to them, and submit copies of any correspondence which may have taken place with the magistrate or joint magistrate on the subject.

52. If session judges do not act thus, they not only fail to discharge the functions belonging to their office, to the detriment of their local utility in controlling the magistrates; but the correction of the errors is retarded until the inspection of the statements by the Nizamut Adawlut, and until the issue and transmission of the orders required on them. The time and attention of the Nizamut Adawlut are thus occupied by topics which, though in themselves of high importance, can be more effectually treated and disposed of by the local authorities.

53. Session judges will take measures to secure the punctual dispatch of the statements at the prescribed periods: the main object of reports of this nature is defeated by their not being submitted to the authority by whom they are to be revised, immediately after the close of the period to which they refer; and it is expected that in future the monthly and half yearly statements will be submitted within 15 days after they have become due (vide paragraph 5 of the magistrate's rules), and the annual ones on or before the 1st of February of each year.

54. In submitting their monthly statements, the session judges will continue to accompany them with a letter reporting the close of the session, in the form given below, which, with a slight modification, is the same as the one heretofore in use. The information formerly contained in the memorandum appended to the letter, being now furnished in statement No. 5, will be omitted here.

No. ——

To

Register of the Court of Nizamut Adawlut, Lower (or North-Western) Provinces.

SIR,

I have the honor to report, for the information of the Court of Nizamut Adawlut, that I held sittings in the sessions court on the 10th, 11th, 18th, 24th, 25th, 26th, 27th, 28th, and 29th, a period of 9 days of the month of ———— 184–, during which time I examined 83 persons; and to submit the following statements.

Nos. 1 to 6 and 9. Magistrate's statements.

„ 1 to 5. Statement of persons brought to trial, detained on requisition of security, appeals, &c.

„ 6. Statement of prisoners punished without reference.

„ 7. Register of criminal trials referred to the Nizamut Adawlut.

„ 8. Statement of prisoners acquitted by the session judge.

„ 9. Register of criminal trials, for the submission of which to the Nizamut Adawlut orders have been received during the month.

„ 10. Calendar of trials postponed.

Roobakarees of the magistrate and futwas of the law officers, or verdict of assessors or jurors.

I have the honor to be,
Sir,
Your most obedient servant,

OFFICE OF SESSION JUDGE,
ZILLAH ————
The ———— 184–.

Session Judge.

SUPPLEMENTARY RULES.

55. Appeals instituted under Act IV. of 1843, from orders passed by magistrates in the exercise of the powers vested in them by Act LIII. George III. Chapter 155, and also from those passed by them as justices of the peace, will be included in the first section of statement No. 4; and with a view to the eventual information of Government, respecting the working and effects of the law first cited, a note will be appended in the column of remarks distinguishing those two classes of appeals from ordinary cases. Statement No. 4.

56. It appearing to the Court that the rules regarding the numbers to be borne by the prisoners and cases, respectively, in the session statements, are defective, and that a want of uniformity is the result, the following instructions are supplied.

57. All prisoners committed by a magistrate, in any one month, are numbered by that officer in his calendar of commitments in one continuous series, commencing and terminating with the month, the last serial number indicating the number of persons committed during that period. These numbers should be carefully retained by the session judge in column 2 of his statements Nos. 6 to 9, and column 1, statement No. 10, as the case may be. Each magistracy will have a separate monthly series of numbers for prisoners committed to the sessions court, so that, if a session judge has three magistracies under him, there will be three series of numbers for prisoners. In districts where there may be two or more officers, vested with the full powers of magistrate, the magistrate of the district will number in one series the whole of the prisoners Statements Nos. 6, 7, 8, 9, and 10.

committed by himself and his subordinates in any one month, and, to enable him to do this, will require the officers who have the power of making commitments, to furnish him with a report of the number of commitments made by each and the number of prisoners in each case.

58. With the object of bringing the particular series, to which such prisoners belong, more distinctly into view, session judges will note under each case in column 1 of statements Nos. 6 to 9, the month in which it was committed.

59. The disposals by the session judge in any one month will prescribe the serial numbers to the cases, each series commencing with the first and terminating with the last case decided in each sessions, and the last number of the series being equal to the number of cases disposed of in the same period.

Statement No. 10.

60. Under the above rules, the cases entered in statement No. 10, will be necessarily unprovided with numbers, and hence no column is assigned to that purpose.

Statements Nos. 6, 7, 8, 9, and 10.

61. It is essential to the formation of a just estimate of the discretion exercised by the several officers, vested with the power of making commitments to the sessions, that the name of the committing officer should be recorded in each case, and this not only in one statement, but in all in which such case may appear. This practice, however, has not been strictly and generally observed, owing, it is apprehended, to the absence of a specific direction to that effect in the rules framed for the preparation of the session statements, which assume, that the session judges are familiar with the scope and object of such record. To leave no doubt on the subject, the Court are pleased to direct that session judges, when preparing their returns for submission to the Court, will invariably specify in each of their statements, *i. e.* in column 9 of statements Nos. 6 and 8, in column 13 of statements Nos. 7 and 9, and in the 1st section of column 3, statement No. 10, not only the official designations, but the name also of the committing officer.

If statements are blank, judge what to do.

62. The Court are pleased to direct, that when there may be no matter for entry in any of the session forms, submitted to this Court, session judges will pass their pen through the designation of such statement or statements in the letter prescribed by paragraph 54 of the rules, and that they will discontinue the transmission of blank returns, as heretofore usual in some districts.

Statement No. 1.

63. The entries under headings Nos. 3, 31, and 32, of statement No. 1, part 1, will be governed by the principle laid down in paragraph 135 of the magistrate's rules.

MAGISTRATE'S RULES.

MAGISTRATE'S STATEMENT No. I.

MONTHLY AND ANNUAL.

PART I.

Officers Employed.

1. Under this head should be entered the name of the officer employed and his official designation, and, if any changes have taken place, the date of each officer's entering on office, and the date of his delivering over charge.

2. Each such change should be immediately reported direct to the Nizamut Adawlut, by the magistrate or joint magistrate delivering over and receiving charge; and the magistrate will, in like manner, report the occurrence of all such changes among his assistants.

3. A copy of the order under which an officer may deliver over charge of his office, need not accompany the report; but the authority for so doing, the date of order, and the nature of the power vested in the relieving officer, should be stated in the report.

4. Magistrates and joint magistrates, on delivering over charge of their offices, are required to furnish the relieving officer with a list of all unanswered letters, and of all periodical reports and statements which having become due, have not been forwarded to the Court. A certificate of this list having been severally given and received, will accompany the report required by paragraph 2.

5. Periodical reports and statements are to be considered as due immediately on the expiration of the month, quarter, half year, or year, to which they relate.

Description of Crimes.

6. The Court have had frequent occasion to notice the loose and immethodical manner in which magistrates enter an offender in this statement. Instead of recording him under the heading provided for his offence by the statement, he is frequently entered under a new head introduced into the miscellaneous class, in terms unnecessarily detailed. For example, the designation "killing by shooting with a matchlock with previous intent to kill," is perhaps resorted to, when the term "wilful murder" both represents the offence with greater accuracy and precision, and is more consonant with usage. By increased attention to the systematic classification of offenders, with reference to the offences with which they stand charged, the Court are of opinion that the catalogue of miscellaneous offences is susceptible of being much reduced.

7. From the vague and ill expressed wording of the headings meant to designate miscellaneous offences, it is moreover apprehended that these entries are often the result of a *merely literal* translation from the Urdu catalogue of offences made in the office of the magistrate, who ought, however, to satisfy himself that such translations represent the offences in an idiomatic and intelligible way.

8. It not unfrequently happens that a party, brought before the magistrate for a particular offence, on investigation by that officer, is ascertained to have been guilty of another of a graver character on which the magistrate convicts or commits him; but there does not appear to be any uniform and fixed principle of entering such cases in the periodical statements. To supply this

defect the Court of Nizamut Adawlut are pleased to direct that the statements shall be prepared in accordance with the following rules.

9. When, out of several individuals apprehended and sent in, in any one case, some are convicted or committed for various offences, and some are acquitted, the whole of the prisoners implicated in the case should be entered in the 10th and preceding columns, under the heading which designates the gravest offence for which one or more of them may have been sent in; the acquittals being noted in column 13 under that offence, and the convictions in column 11 under the lesser offence or offences of which they may be respectively found guilty by the magistrate, a note being also furnished under the head of "remarks," indicating the particular heading under which the offender originally appeared, and the commitments in column 12 under the gravest crime for which it may be thought proper to commit one or more individuals in the case.

10. In like manner, when one or more offenders stand charged with more than one offence partaking of the same character, they should be entered in the 10th and preceding columns under the graver offence, regard being had to the rule contained in paragraph 9, concerning the mode of exhibiting them after disposal.

11. When one or more persons are concerned in two or more cases of different characters, they will be entered in the 10th and preceding columns, under the distinct headings applicable to such cases, the mode of entering them after disposal being the same as that indicated in paragraph 9.

12. When the crime in all the cases is identical, the number of entries of the persons will correspond with the number of cases.

Column 2.—Number of Crimes ascertained to have been committed.

13. In this column should be included the whole of the crimes ascertained to have been committed during the period to which the statement relates, whether the offenders have been apprehended or not; and magistrates are not to confine themselves for information on this point to the reports of their police officers, but ought to acquire a more accurate knowledge from other channels; and landholders and farmers and their local agents should especially be encouraged to furnish immediate intelligence of all heinous crimes committed within the limits of their respective estates and farms.

Columns 3, 4, and 5.—Under trial at the commencement of the month or year.

14. These columns should exactly correspond in details and totals with columns 17, 18, and 19, respectively, of the statement for the period preceding that reported upon.

Columns 6 and 7.—Number of cases and persons brought to trial.

15. In these columns should be entered all cases of complaint lodged in the magistrate's court during the period embraced by the statement, whether the individuals concerned may have been under personal restraint, held to bail, at large on their own recognizance, or merely attending on summons; and the total of column 7 should correspond with the third or total column of statement No. 1, part 2.

Columns 8 and 9.—Received by transfer.

16. These columns should exhibit such cases and prisoners as may have been made over by the authority of another jurisdiction or power, to the magistrate, for disposal; and in the

"remarks" the names of the districts, jurisdictions, or powers, should be carefully noted, to enable the Court to ascertain that they have been correctly entered in the statements of the transferring district, if within the jurisdiction of the Court, or that the discrepancy may be accounted for if transmitted by an authority not under the control of the Court.

Column 10.—*Total number of persons under trial.*

17. The aggregate of columns 4, 5, 7, and 9, should be exhibited in this column.

Column 11.—*Convicted.*

18. In filling up this column, regard should be had to the rule contained in paragraph 9, whenever the same may be applicable.

Column 12.—*Committed.*

19. The remark in the preceding paragraph applies to this column also. Some magistrates are in the habit of committing prisoners on a charge of "affray with murder;" but if the offence be attended by any aggravating circumstances, rendering it doubtful whether the killing did not amount to murder, the commitment should be for "murder," the charge of "affray with homicide" furnishing a second count.

20. Others, again, enter cases of "killing thieves" in the detail of heading 41 (miscellaneous of the former statement). Such cases, however, except when accompanied by aggravating circumstances warranting a commitment for murder, (in which event a note should be given under the head of "remarks," stating that the party killed was a thief, slain in the act of committing a burglary, or theft, as the case may be,) should be entered under the 5th heading or "culpable homicide."

21. Where there is any doubt as to whether the accused is guilty of a higher or lower grade of an offence of the same character, the commitment should be for the higher grade. Thus if it be doubtful from the evidence before the magistrate whether the offence amounts to murder or only to culpable homicide, the commitment should be for murder. On the other hand, where a doubt exists as to whether a commitment should be made for knowingly receiving plundered property or for the actual robbery, the prisoner should be committed on both counts, and entered under the heading of the more heinous charge of robbery.

22. Magistrates are required, whenever they may commit a prisoner for trial, immediately to intimate the same to the session judge; and the observance of this rule, the Court remark, is of importance, as it is calculated to ensure uniformity between the magistrate's statement No. 1, and the session judge's No. 1 (submitted to the Nizamut Adawlut). The roobakaree containing this information, which should be written and despatched as soon as the commitment has been made, should specify the precise charge on which the prisoner or prisoners have been committed, the number that the offence bears in the statement, and an abstract of the grounds of the commitment.

23. Should the session judge see reason to direct any alteration of the charge on which a prisoner may have been committed, he will distinctly state in his order the heading and number under which the case should be included in the statement; to which order the magistrate will conform, by removing the prisoner from the heading under which he was originally committed in column 12, and entering him in the same column under the heading indicated by the session judge; but no alteration must be made in any of the other columns. The magistrate will give immediate notice to the session judge that he has carried the order into execution.

24. On the 1st of every month the magistrate or joint magistrate will send a roobakaree to the session judge, certifying whether any and what new commitments or modifications of former ones have been made in the month just closed, subsequent to those of which previous intimation had been given.

Column 13.—*Acquitted.*

25. The rule contained in paragraph 9, in regard to acquittals, should be observed in making the entries in this column.

Cases of zumeendars and other landholders, burkundazes, chokeedars, and other officers of police, who may have been summoned to the sudder station to answer for neglect of duty, and discharged after admonition, as well as those of persons released on moochulka when not convicted of any specific offence, shall be entered under the head "acquitted," a note being added in the "remarks" to distinguish the number of prisoners so discharged, from those who may have been otherwise acquitted.

Column 14.—*Died.*

26. The deaths of such offenders as may die prior to a sentence being passed in their cases, are to be recorded in this column, under the heading designating the crimes with which they stood respectively charged.

Column 15.—*Escaped.*

27. Prisoners who may have effected their escape, as well as offenders who, being at large on bail, recognizance, or under summons, may have absconded prior to the decision of their cases, should be entered in this column under the heading appropriated to the crimes with which they were respectively charged.

Column 16.—*Transferred.*

28. Prisoners apprehended in the district and made over for trial to another district or authority, whether within the jurisdiction of the Nizamut Adawlut or beyond its control, should be entered in this column, and the names of the districts or authorities, to whom they have been transferred for trial, should be carefully noted in the remarks, to enable the Court to ascertain that such offenders have been duly accounted for in the statement of the receiving authority, if under the control of the Nizamut Adawlut, or, if not subordinate to the Court, that the cause of the discrepancy necessarily arising, may be apparent.

Column 17.—*Cases under trial at the close of the month or year.*

29. Cases of every description which may be pending at the close of the month or year, should be exhibited in this column.

Column 18.—*Prisoners in Jail at the close of the month or year.*

30. The number of prisoners in duress at the close of the month, whose cases were still pending, is to be shown in this column. The total however will not invariably represent the actual number of prisoners in confinement (which will be shown in part 8), but may frequently be in excess of that number in consequence of one or more prisoners being implicated in more than one case.

31. When the true number of prisoners under trial in jail, as shown in part 8, statement No. 1, may exceed 50, an explanation of the cause should be given under the head of "remarks."

32. In all complaints for offences which are clearly bailable, the magistrate is required to apprize the party that security will be received for his appearance, and at the same time to state the amount; and whenever any persons charged with bailable offences are detained in jail, the grounds of their detention should be stated under the head of "remarks."

Column 19.—Persons on Bail at the close of the month or year.

33. All persons whose cases were pending at the close of the period reported on, whether the individuals had been released on bail or personal recognizance, or were simply attending on summons, are to be entered in this column. The nominal excess, noticed in paragraph 30, may frequently occur here also. Persons who have given bail or moochulka to keep the peace, or to refrain from any act, in cases finally disposed of, are not to be entered in this column.

34. Magistrates will submit explanations whenever the real number of persons in attendance to answer charges on bail, moochulka, or summons, as shown in part 8, statement No. 1, may exceed 100.

General Remarks.

35. It will be observed that the aggregate of columns 11 to 16 and columns 18 and 19 will correspond with the total in column 10 as regards each crime, except where persons, having been charged with one offence and convicted or committed on another, are transferred under the rule contained in paragraph 9; but the aggregate of columns 4, 5, 7, and 9, must always correspond with the grand total of column 10.

36. Complaints by petition, rejected, on whatever grounds, by the magistrate, without apprehending or summoning the party complained against, will not enter into this part.

PART II.

Column 1.—Apprehended and Summoned by the Police Officers.

37. The first column of this part should exhibit the total number of persons apprehended and sent in by the police officers, or from whom bail may have been taken by them of their own authority.

Column 2.—By the Magistrate and his Subordinates.

38. All persons attending on summons before the magistrate or his subordinates, as also such persons as the police officers may have been ordered to send in, in consequence of information received by the magistrate independently of those officers' reports (in which latter case a note to that effect should be furnished in the column of "remarks"), should appear in this column.

Column 3.—Total of apprehensions and attendances on Summons.

39. This column should exhibit the total of the two preceding columns, and should correspond with the grand total of column 7, part 1.

PART III.

40. The object of this part is to enable the magistrates and the superior courts to exercise a more efficient supervision and control over the proceedings of the police officers, in the performance of the very important duty entrusted to them, of taking cognizance of criminal offences, to which subject the Court request the particular attention of the officers concerned.

Heading 1.—Apprehended at the Thana.

41. Under this heading should be shown the total of all offenders apprehended at the thana.

Headings 2, 3, 4, *and* 5.

42. The details of these headings sufficiently indicate what they are severally intended to represent; their aggregate should correspond with the number under the 1st heading of this part, and the aggregate of headings 2 to 4 with the 1st column of part 2.

PART IV.

43. The object of this part is to show the quantity of work performed by each grade of officers. The total of column 2 will correspond with the aggregate of columns 11, 12 and 13, part 1.

Column 1.—*Cases disposed of.*

44. The number of cases in which the persons entered in columns 11, 12 and 13, of part 1, were implicated, should be distributed among the several grades of officers enumerated, in the proportion of their decisions, being entered under their respective designations in this column.

Column 2.—*Persons disposed of.*

45. A similar distribution to that prescribed in the preceding paragraph should be made of the persons contained in columns 11, 12 and 13, and entered in column 2.

PART V.

Section 1.

46. The total of column 1 should correspond with the total of column 17, part 1; the total of column 2 with the total of column 18, part 1; and the total of column 5 with the total of column 19, part 1.

Section 2.

47. In this section, to which the above rules apply in every respect, should be entered a distribution, with reference to time, of the whole of the cases and persons contained in the 1st section, the totals of the two sections coinciding with each other.

48. The magistrate will always explain briefly, under the heading of "remarks," the causes of delay in disposing of the cases of such of those as may have been in any of the above predicaments for a period exceeding 3 months.

PART VI.

Convictions.

Columns 1 *and* 2.—2 *to* 3 *years.*

49. Persons who may have been sentenced to additional imprisonment above 2 years, in lieu of corporal punishment, should be entered in these columns.

Column 6.—*Fined.*

51. Prisoners sentenced to fine only, without any additional punishment, should be exhibited in this column. Those in whose cases the fine forms only a part of the punishment, are not intended to be inserted here.

Column 10.—*Total of Convictions.*

52. The several totals comprised in this column should denote the number of persons convicted and punished by each grade of officers, and should correspond with the aggregates of columns 1 to 9 in detail; and the grand total of this column should correspond with column 11, part 1.

Column 15.—*Total of Acquittals.*

54. The aggregates of columns 11 to 14 as respects each grade of officers, should correspond with the totals in column 15, the grand total of which should coincide with the total of column 13, part 1.

PART VII.

Columns 13 *and* 14.—*Total of persons fined and the amount of fines.*

56. The aggregates of columns 1, 3, 5, 7, 9 and 11, and 2, 4, 6, 8, 10 and 12, should correspond, as regards each grade of officers, and also in total, with columns 13 and 14, respectively, of this part.

Column 15.—*Amount realized.*

57. In this column should be entered the amount of fines realized from the persons entered in column 13, and, supposing the whole amount imposed to be realized, its total should correspond with the total of column 14.

Columns 16 *and* 17.—*Fines imposed in addition to other punishment. Amount realized.*

58. All fines imposed as an additional punishment, together with such portion thereof as may have been realized during the period embraced in the statement, should be severally exhibited in these columns.

PART VIII.

Column 1.—*Under trial during the month.*

59. In the first column should appear the number of males and females who have been brought before the magistrate during the month, inclusive of those whose cases were still pending at the close of the former statement, the total corresponding with the total of column 10, part 1, which number, minus a number corresponding with the number of times that one or several persons may have been entered more than once in consequence of being implicated in more than one case, will shew the true number of individuals brought up before the magistrate during the period. In like manner those whose cases were pending at the close of the period, will appear in the 2nd and 3rd columns. For example, suppose there were—

	Under trial during the month.	Under trial at the close of the month.	
		In Jail.	On bail.
Males, ...	20	25	10
Females, ...	10	4	1
Corresponding with columns 10 and 18 and 19, part 1, ..	30	29	11
Implicated in more than one offence, ...	3	4	2
The actual number of persons, ...	27	25	9
Males, ...	24	24	7
Females, ...	3	1	2
	27	25	9

Columns 2 and 3.—Under trial at close.

60. These columns will be filled up on a similar principle to that which is declared applicable to column 1.

MAGISTRATE'S STATEMENT No. II.

MONTHLY AND ANNUAL.

PART I.

61. In this part should be entered, under the same rules as are prescribed for part 1 of statement No. 1, every description of crime not enumerated in the catalogue given in that part, for which no specific heading is provided, such, for example, as sodomy; assaults not attended with wounding or personal injury; inconsiderable affrays, *i. e.* affrays not attended with violent breach of the peace; vagrancy; trespass, &c. &c. The letters of the alphabet in the usual consecutive order should be prefixed to these entries in the "index" column, and the totals of the several columns should be transferred to their corresponding columns in Statement No. 1, part 1, heading 41.

PART II.

62. Attempts to commit crimes of whatsoever description, both those included under the first 40 headings of statement No. 1, part 1, and those entered in part 1, of this statement (the aggregate of which is shown under heading 41), should be exhibited in part 2, the former being distinguished by the same numbers as are severally borne by those headings; thus to "attempt at burglary with wounding," No. 17 should be prefixed;—to "attempt at theft by administering dhutoora," No. 22, &c. &c. The totals of the columns in this part will, in like manner, be transferred to statement No. 1, part 1, heading 42.

PART IV.

71. In this part will be entered persons confined in default of furnishing the security required by Regulation VIII. 1818.

PART V.

72. The names of persons who have been confined for a period exceeding three years, on requisition of security, should be entered in this part;—the date of the original or first requisition, the date of the last renewal of the order, and the designation of the revising authority, being inserted in the appropriate columns. The total number of persons exhibited in this part, should correspond with the number in the 7th column of part 4.

PART VI.

73. In this part are to be entered, with the particulars indicated by the headings of the several columns, persons who may be required to furnish security, or penal recognizances to keep the peace, on *conviction* of any specific offence, conformably to the provisions of cl. 1, sect. 2, Reg. IV. 1825, and the interpretation of that enactment contained in Const. No. 831.—[*C. O. October* 24, 1843.]

MAGISTRATE'S STATEMENT No. III.

MONTHLY AND ANNUAL.

PART I.

74. Herein will be entered all prisoners remaining in custody of the magistrate, whose cases were pending before the sessions court at the close of the period treated of; and the number shown in this statement will correspond with the session judge's statement No. 1, part 2, columns 2 and 3, heading 5.

PART II.

75. The detail of heading 1, part 1, ("in former months") should be shown in this part; and the number shown in this statement should correspond with the session judge's statement No. 1, part 2, columns 2 and 3, heading 5, of the preceding month.

MAGISTRATE'S STATEMENT No. IV.

MONTHLY AND ANNUAL.

76. This statement is meant to show the operation of Act IV. 1840; and magistrates should note, in the column of remarks, the number of suits which may have been pending more than a month, with an explanation of the cause of delay in their disposal.

MAGISTRATE'S STATEMENT No. V.

MONTHLY AND ANNUAL.

77. The object of this statement is to bring to the notice of the Court all regular criminal trials referred for their orders, the final sentence in which has not been received by the magistrate on the last day of the month. It should, therefore, embrace all criminal cases, regularly tried by the session judges (or commissioners in special cases), the proceedings in which have been submitted to the Court, and the sentence in which had not been received on that day, whether the same have been regularly referred by the session judge (or commissioner), or called for by the Court on inspection of the jail delivery statements, or on petition; as well as cases of either description, which may have been sent back for further evidence or explanation.

78. In order to enable the magistrate to keep up this record with punctuality and regularity, he will receive notice from the session judge of his having referred the case to the Superior Court.

MAGISTRATE'S STATEMENT No. VI.

MONTHLY AND ANNUAL.

79. This statement will exhibit the whole of the work disposed of by the magistrate and his subordinates, during the period to which it refers, as also the quantity of business pending before each individual at the close thereof. Columns 1 to 4 will be restricted to the exhibition of cases which appear in the magistrate's statement No. 1, part 1; and the remaining columns will embrace all other cases. The aggregate of columns 1 and 3 will correspond with the total of column 1, part 4, of the magistrate's statement No. 1; and the aggregate of columns 2 and 4, with the total of column 1, part 5, of the same statement.

MAGISTRATE'S REMARKS.

80. Under the head of "remarks" will be entered all observations and explanations, illustrative of the statements, which the magistrate may have occasion to make, or which may be required by the foregoing rules.

81. To facilitate reference, the numbers of the particular statement, part, heading, and column, respectively, to which the remarks may bear reference, should invariably be prefixed thereto.

MAGISTRATE'S STATEMENT No. VII.

ANNUAL.

82. The proportion of disposals by each officer should be given, and the totals of columns 2, 4, and 6, should correspond with the totals of columns 11, 12, and 13, of statement No. 1, part 1, and with the grand totals of columns 1 and 2, statement No. 1, part 4, respectively.

MAGISTRATE'S STATEMENT No. VIII.

ANNUAL.

83. It has been supposed by some magistrates that this statement should comprise a record of all their operations of every kind for the year; and accordingly the computation of the average time has been made to include proceedings from other zillahs and other miscellaneous applications and petitions; but this is an error. Cases in which the magistrate acts in his judicial, as distinct from his ministerial capacity, should alone form the subject of this statement; and no cases should appear in it which do not enter into statement No. 1, part 1, with which it should correspond.

84. Cases in which the agency of the police has been employed should be kept distinct from those in which the accused may have been summoned to appear by the magistrate.

MAGISTRATE'S STATEMENT No. IX.

MONTHLY AND ANNUAL.

85. The magistrate, or other officer in charge of the office of magistrate, will submit this statement, the nature of which is sufficiently indicated by the respective headings, to the session judge, at the close of each month and year, for transmission to the Nizamut Adawlut.

GENERAL RULES.

86. No alterations should on any account be made in any form directed by the Sudder Court to be used; and none but lithographed forms should be made use of, except with their express permission.

87. The monthly and half yearly statements will be submitted by magistrates and joint magistrates, in duplicate, within 10, and the annual within 15 days after they become due, under paragraph 5, to the session judges, who will forward one copy to the Court.

88. The Court have observed that it is not unfrequently urged by the magistrates, that the occupation of their time, in more important duties, prevents the submission of these statements within the prescribed period; and from the terms of the remarks on some of the statements, the preparation of them would appear to be often left to clerks possessing but an imperfect knowledge of the English language. To ensure greater accuracy and punctuality in their despatch, the Court suggest that, where it may be practicable, the duty of superintending them be entrusted to a covenanted assistant, under of course the control and responsibility of the magistrate himself; and the duty, they conceive, might be considerably lightened by anticipating arrangements instead of being postponed to the last hour.

SUPPLEMENTARY RULES.

89. The crime of a prisoner, whose case is pending from a former month, or year, is not to be entered in this column, which is to be exclusively devoted to the exhibition of the crimes ascertained to have been committed within the month, or year, to which the statement relates. Statement No. 1, part 1, col. 2.

90. When the case of a party, charged with a lesser offence, lies over to a succeeding month, in which his crime assumes a graver aspect (as in the case of a prisoner being charged with wounding in one month, and the wounded person dying, in consequence of his wound, in a subsequent month), he should be entered in column 4 or 5 (as the case may be) under the original charge, and on conviction, or committal, the entry should be made under the heading designating the graver crime of which he may be found guilty, or on which he may be committed (vide paragraphs 9 and 35 of rules). Statement No. 1, part 1.

91. It appears to be the opinion of some officers, that as parties held to bail at the thana are often unconditionally released by the magistrate on receipt of the thana reports, without such parties being personally brought to trial by that officer, they should not be entered in column 1, part 2, and consequently not in column 7, part 1, the heading of which implies only persons "brought to trial." The Court, however, observe, that if it were practicable to frame the headings of statements and forms with a degree of precision fitted to meet every case, there would be no necessity for separate explanatory rules by which to construe the spirit and meaning of such headings; but it is found impracticable to arrive at such precision, and accordingly the number of persons brought to trial in any month is explained, by paragraph 15 of the rules, to be identical with the number apprehended or attending on summons. Before bail (which includes moochulka) can be demanded by a thanadar, there must be some antecedent criminal charge, and although the parties released by him on bail may not, strictly speaking, be formally arraigned and tried by the magistrate, yet, when that officer directs their unconditional release, they are constructively tried and acquitted by him. Paragraph 42 requires that persons of this class shall be comprised in the number entered in column 1, part 2; and paragraph 39, that the aggregate of columns 1 and 2, of this part, shall correspond with the total of column 7, part 1. Statement No. 1, Part 1, col. 7. „ 2, „ 1. „ 3, heading 4. Rules, paras. 15, 39, 42.

92. The large proportion which the number of persons bailed by the police officers bears to the integral number of all other descriptions of cases in some zillahs, and their subsequent unconditional release by the magistrate on inspection of the thana reports without the attendance of the parties, indicate a precipitancy and want of sound discretion, which demands the serious attention of the superior authorities. The police officer, who unnecessarily demands bail, from large masses of the population, fails in the due discharge of his duty, equally with the officer who, through neglect, suffers criminals to elude justice. The Court, therefore, after full consideration of the subject, see no reason to make any alteration in the rules contained in paragraphs 15, 39, and 42.

93. When parties, released on bail by the police officers, are unconditionally liberated by the magistrate without summoning them before him, they should be entered in column 13, part 1, Statement No. 1, and under the heading, in part 4, Statement No. 1, of the officer, who, after a consideration of the thanadar's report, may direct their unconditional release. If their cases are disposed of after attendance on the magistrate, they should be entered in column 11, 12, or 13, according to the nature of the order passed in the case of each person, and, in the column of remarks, the magistrate may specify the number of persons who have been liberated after trial, and of those who have been released without being summoned before the magistrate.

Statement No. 1, part 1, col. 7; and part 2.

94. A person apprehended and brought to trial in the zillah, for a crime committed in a foreign territory, will be entered in part 2, column 1 or 2, as the case may be, and consequently in column 7, part 1.

Para. 12.

95. When the crime in all the cases is identical, the nominal number of persons will correspond with the aggregate of the nominal number of persons in each case.

Statement No. 1, part 7, cols. 15 and 17

97. All fines, realized in any given month, or year, will be entered in one or the other of these columns (according to the nature of the fine) in the statement for the month, or year, in which they were realized, and this without reference to the time when they were imposed.

Statement No. 1, part 7, col. 16.

98. Fines imposed in lieu of labor, being a punishment in addition to imprisonment, should be entered in this column.

Statement No. 8, class 1.

102. The time passed in transit from the thana to the magistrate's court, will be included in the time entered in the 3d column of Statement No. 8.

class 2.

103. Cases received from other zillahs will appear in the 2nd class of Statement No. 8.

classes 1 and 2.

104. Cases, if sent in by the military authorities with the aid of the police, will appear in the 1st class of Statement No. 8; if without their aid, in the 2nd class, in which class also will appear cases arising in the jail and cases received from other zillahs.

Statement No. 1, remarks.

105. Magistrates will furnish a note, in the subjoined form, under the heading of remarks on Statement No. 1, showing how many burglaries and thefts unattended with personal violence were left uninvestigated under the operation of clause 2, section 2, Regulation II. 1832:

"NOTE.—Out of the total number of entries in column 2 under headings 18, 23, 26 and 42 (say 152) 125 were uninvestigated with reference to Regulation II. 1832, viz. under heading 18, 55 cases; under heading 23, 51 cases; under heading 26, 11 cases; under heading 42, 1 case."

Statements Nos. 1 and 2.

106. Magistrates or officers in charge of magistracies will append a note in the column of remarks distinguishing the number of cases brought before them as justices of the peace, and any which may be brought before them under Act LIII. George III. Chapter 155, the number decided, and the number, if any, removed by writ of certiorari to Her Majesty's Supreme Court in Calcutta.

Statement No. 1, part 3.

107. With advertence to clause 17, section 19, Regulation XX. of 1817, the heading "unconditionally released" is hereby discontinued; and the fifth heading will, in future, be appropriated to the exhibition of persons whose cases may be pending investigation at the thana, at the close of the period to which any given statement may refer.

108. It having been suggested to the Court that in the absence of specific instructions, magistrates may fall into the error of entering under heading 2, of part 3, persons who may have been released on bail and accounted for under heading No. 4 of this part, in a preceding statement, the Court are pleased to inform those officers, that a bailed prisoner once entered in statement No. 1, part 3, who will necessarily be transferred to the magistrate's statement No. 1, part 1, on receipt

of the thanadar's report, is not again to appear under the 2nd heading of part 3, merely because the magistrate requires his attendance through that officer. The rules which apply to prisoners bailed in the first instance by the magistrate himself, will be applicable to the prisoners bailed by the thanadar from the time they are brought on the magistrate's statement.

109. In order that the Court may be kept informed of the application of Acts III. and V. of 1844, and that materials may be collected to serve as data for judging of the general effects of the enactments in question, at a future period, magistrates will add two tables (to be called parts 9 and 10, respectively) to their statements No. 1, in the form indicated by the exemplar [given below.] Statement No. 1, parts 9 and 10.

110. It will be observed that the materials for the preparation of part 9, will be drawn from column 9, part 6, and of part 10, from column 6, part 6, of which they will respectively be components. Column 3 of part 10 will not be confined to the exhibition of the recovery of fines imposed during the period to which the statement refers, but will show all sums realized, without reference to the time when the fines were imposed.

111. In columns, 11 and 12, respect is to be had to the officer for whose decision the preliminary investigations were made; and opposite to the designation of the officer who conducted such investigation, will be entered the cases prepared by each subordinate. Statement No. 6.

112. With reference to paragraph 1 of the rules for the preparation of the magistrate's statements, the Court observe with satisfaction, that the information thereby required to be submitted in part 1, statement No. 1, is, with a few exceptions, correctly furnished. It is however desirable that there be no exception, and that the paragraph above quoted be made applicable to every officer exercising magisterial functions of whatever degree, whether magistrates, joint magistrates, assistants, principal sudder ameens, law officers, moonsiffs, or deputy collectors. Officers in charge of magistracies are requested to be specially careful in recording the dates of assumption and resignation of each incumbent with accuracy, as the correctness of the annual reports will be tested by this criterion. Statement No. 1, part 1.

113. It being desirable to exhibit in one view the changes in the agency, magistrates are directed to attach additional paper, when the space allotted may not suffice for furnishing the information required by paragraph 1.

117. The 1st section of this statement is intended to bring under the observation of the Court instances of undue detention of such witnesses from their homes, as may have been dismissed prior to the expiry of the period reported on, as well as to furnish data for comparing the management of one magistracy with that of another:—accordingly, all witnesses who may have been in attendance during any part of the period reported on, but who had obtained their discharge before its close, should be entered in the appropriate columns of this section. Statement No. 2, part 3, section 1.

118. The longest period any person may have been detained before obtaining his discharge, should be entered in column 15, but no witnesses should appear in this section who may be in attendance at the close of the period to which the statement refers.

119. This section will be appropriated to the exhibition of witnesses in attendance at the close of the period reported on. These individuals, it will be observed, are not to be included in the number entered in the first section. section 2.

120. The totals of the several columns of sections 1 and 2, will be exhibited in this section, and the grand total of column 14, will show the exact number of witnesses who may have been in attendance during any portion of the period embraced by the statement. section 3.

121. The reasons for the detention of all witnesses beyond 8 days should be explained in the column of remarks.

122. In order to illustrate the instructions contained in the 4 preceding paragraphs, and to prevent the possibility of misapprehension on the part of the clerk who may be charged with the preparing of the statement, the following facts are supposed:

One witness was in attendance from the 2nd to the 9th April, when he was discharged, consequently he was detained 8 days from his home, and should, therefore, appear in the 9th column of section 1.

Two witnesses attended from the 22nd March to the 8th April, when they were discharged, they were consequently 18 days from their home, and should be entered in the 11th column of section 1.

Four witnesses attended from the 8th to the end of April, without having obtained their discharge, and thus being detained 13 days, should appear in the 12th column of section 2.

Three witnesses were detained from the 20th March to the end of April, without obtaining their discharge, and ought therefore to appear in column 13 of section 2.

123. At the close of each month the aggregates of columns 8 to 14 of the magistrate's diary, the form of, and the rules applying to which, are circulated under this date,[a] will be exhibited in columns 2 to 8, section 1, of the abstract required to be submitted to the Court, and the total number shown in the 15th column of the former statement will be distributed in columns 9 to 13 of the latter, and the number of persons in attendance on the last day of each month, will appear in the columns of section 2, which indicate the time they may respectively have been detained up to that date.

124. In preparing the annual returns, nothing more will be necessary than to sum up the totals of columns 2 to 14 of the monthly returns, and enter them in the corresponding columns of the annual statement, noting the longest period any person may have been detained in column 15; observing the same rule with regard to sections 2 and 3, as is prescribed for the 2nd and 3rd sections of the monthly abstract. Fractions of days are accounted entire days. Section 3 being nothing more than the aggregate of the 1st and 2d sections, needs no illustration beyond what is given in paragraph 120.

Statement No. 2, part 1.

125. In order to show the degree in which the responsibility of zumeendars is enforced, the magistrates will be pleased in future to enter cases of zumeendars and chokeedars brought up for neglect of duty, under separate headings in statement No. 2, part 1.

Statement No. 8.

126. In the magistrate's statements No. 8, for some districts, the totals of columns 5, 6, 7, and 12 do not show the average time occupied, but the aggregate of the particulars entered for the 12 months, while the statements of other districts are erroneous in regard to columns 8, 9, 13 and 14. With a view, therefore, to the correct preparation of the statements in question for the future, the Court request attention to the following rules.

127. Column 5 should exhibit the result of dividing the number in column 2 by that in column 1.

128. Column 6 should exhibit the result of dividing the number in column 3 by that in column 1.

129. Column 7 should show the totals of columns 5 and 6 added together.

130. Columns 8 and 13, should exhibit the longest period mentioned in the 12 months, *not the totals* of all the periods.

131. Columns 9 and 14 should exhibit the shortest period in the 12 months.

132. Column 12 should exhibit the result of column 11, divided by column 10.

(a) See Circular Order, No. 194, 22nd January 1845.—[*Para.* 348.]

133. The average time should not be given in years, or parts of years, but in days, omitting fractions.

134. The 93rd paragraph of the rules for the preparation of the magistrate's statements, provided for the insertion of a note to distinguish the persons released after trial, from those released without being summoned before the magistrate. The Court direct that, in future, the number of persons released after trial be distinguished into those summoned by the magistrates, and those sent in by the police of their own authority. This may be done conveniently by adopting the following form, which comprehends the whole number of persons released: Remarks.

Number of persons acquitted, ...	66
Summoned by the magistrate and his subordinates, ...	20
Sent in by the police, ...	30
Released on bail by the police, and not required to appear before the magistrate, ...	16

135. The practice which has heretofore prevailed of entering "riots attended with murder, homicide, or violent breach of the peace," under heading 41 of the magistrate's criminal statement No. 1, part 1, being considered objectionable, the Court are pleased to direct, that riots attended with murder shall be entered under the heading (No. 3) appropriated to the exhibition of the latter offence, a note being added in the column of remarks, to distinguish such cases from others of simple murder, and that riots attended with homicide or with violent breach of the peace, shall be aggregated with "affrays," to which they bear some affinity, under headings 31 and 32 of statement No. 1, part 1, agreeably to the formula given in the margin.* Statement No. 1.

*31 } Affrays and 32 } Riots, { With homicide. With violent breach of the peace.

136. Whenever any individual, having been acquitted of a penal act, on the ground of insanity, and detained in confinement in default of security, may be entered in part 5, of Statement No. 2, magistrates will be pleased to append a note in the margin distinguishing him from others exhibited in the same part and statement. Statement No. 2, part 5.

137. That the Court may be enabled to ascertain to whom delay, in the examination and discharge of witnesses, may be attributable, the magistrates will be pleased to make the following addition to Statement No. 2, part 3, exhibiting the number of witnesses examined by each magisterial agent, and the periods during which they were detained in attendance by each. The responsibility of delay, and the duty of explaining its cause, will rest on the officer, whether magistrate, assistant, or other, before whom it may occur. Statement No. 2, part 3.

The subjoined form can be appended without difficulty to part 3, Statement No. 2, by simply prolonging the columns, filling up the first column in the manner shown in the exemplar:—

By Mr.	Magte.														
"	"														
"	"														
"	"														
"	"														
"	"														

APPENDIX D. No. 1.—Statement No. 1, Part 1.

Monthly and Annual.

Statement showing the number of Persons brought to Trial, Convicted, Acquitted and Referred to the Nizamut Adawlut by the Session Judge of Zillah ———, and those whose cases were pending at the close of ———

OFFICERS EMPLOYED AS SESSION JUDGE.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.	22.	23.	24.	
Mr. from to	Under trial at the close of —			Persons committed during the —	Received back after reference to the Nizamut Adawlut.		Received by Transfer.		Total of persons under trial.	Commitments cancelled.		Convicted and punished.		Referred to the Nizamut Adawlut.		Acquitted and discharged.		Died.	Escaped.	Transferred.	Under trial at the close of —			Remarks.
Mr. from to																								
Mr. from to																								
Mr. from to																								
Judge's rules, paras. 1 *and* 2. *Magistrate's rules, paras.* 1 *to* 5.																								
Description of Crimes.	Cases.	Prisoners in jail.	Persons on bail.		Cases.	Persons.	Cases.	Persons.		Cases.	Persons.	Cases.	Persons.	Cases.	Persons.	Cases.	Persons.				Cases.	Prisoners in jail.	Persons on bail.	
	Judge's rules, para. 3.			*Judge's rules, paras.* 4 *to* 7.	*Judge's rules, paras.* 8 *and* 9.		*Judge's rules, para.* 10. *Magistrate's rules, para.* 16.		*Judge's rules, para.* 11. *To show aggregate of cols.* 3, 4, 5, 7 *and* 9.	*Judge's rules, para.* 12.		*Judge's rules, para.* 13. *Magistrate's rules, para.* 9.		*Judge's rules, para.* 14.		*Judge's rules, para.* 16.				*Judge's rules, para.* 28. *Magistrate's rules, para.* 18.	*Judge's rules, para.* 19. *Magistrate's rules paras.* 29, 30 *and* 33.			
1 Murder, By Thugs,																								
2 Murder, On the river,																								
3 Murder, Other cases, *Judge's rules, para.* 63.																								
4 Wounding with intent to murder,																								
5 Homicide, culpable,																								
6 Dacoitee, With murder,																								
7 Dacoitee, With torture,																								
8 Dacoitee, With wounding or personal injury,																								
9 Dacoitee, Unattended with aggravating circumstances,																								
10 River Dacoitee, With murder,																								
11 River Dacoitee, With wounding or personal injury,																								
12 River Dacoitee, Unattended with aggravating circumstances,																								
13 Highway robbery, With murder,																								
14 Highway robbery, With wounding or personal injury,																								
15 Highway robbery, Unattended with aggravating circumstances,																								
16 Burglary, With murder,																								
17 Burglary, With wounding or personal injury,																								
18 Burglary, Unattended with aggravating circumstances,																								
19 Theft, With murder,																								
20 Theft, ——— of children for their ornaments,																								
21 Theft, With wounding or personal injury,																								
22 Theft, By administering poisonous or stupifying drugs,																								
23 Theft, Other cases,																								
24 Cattle Stealing, With murder,																								
25 Cattle Stealing, With wounding or personal injury,																								
26 Cattle Stealing, Unattended with aggravating circumstances,																								
27 Child Stealing, For the purpose of selling into slavery,																								
28 Child Stealing, For other illegal purposes,																								
29 Receiving stolen or plundered property knowingly,																								
30 Importation of slaves, and sales or purchase of imported slaves,																								
31 Affrays and Riots, With homicide, *Judge's rules para.* 63.																								
32 Affrays and Riots, With violent breach of the peace,																								
33 Assaults with wounding or personal injury,																								
34 Arson,																								
35 Forgery or uttering forged documents or papers,																								
36 Counterfeiting Coin or uttering base Coin,																								
37 Perjury and Subornation of Perjury,																								
38 Rape,																								
39 Adultery,																								
40 Suttee aiding and abetting,																								
41 Crimes and offences not specified above,																								
42 Attempts to commit any of the above,																								
Total,																								

APPENDIX D. No. 2.

STATEMENT No. 1, Part 2.

	Under trial during the month.	Under trial at the close of the month.	
		In jail.	On bail.
Males, ...			
Females, ...			
Corresponding with columns 10, 23, and 24, Part 1, ...			
Implicated in more than one offence, ...			
The actual number of persons, ...			
Males, ...			
Females, ...			

Judge's rules, para. 20. *Magistrate's rules, para.* 74.

APPENDIX D. No. 3.

STATEMENT No. 1, Part 3.

Convicted and Sentenced.		
To imprisonment for 16 years, ...		*Judge's rules, para.* 21.
15 "		
14 "		
13 "		
12 "		
11 "		
10 "		
9 "		
8 "		
7 "		
6 "		
5 "		
4 "		
3 "		
2 "		
1 "		
Less than 1 "		
Fined and Discharged, ...		

Total to correspond with column 14, *Part* 1.
Judge's rules, para. 22.

APPENDIX D. No. 4.

STATEMENT No. 1, Part 4.

Amount of fines imposed under Regulation II. 1834, ...		*Judge's rules, para.* 23.
Amount realized, ...		

APPENDIX D. No. 5.

STATEMENT No. 1, Part 5.

Of Criminal Cases tried with the assistance of Natives under Regulation VI. of 1832, or the Law Officer, decided during the ——

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.
Cases tried with the assistance of a Punchayet.			Cases tried with the assistance of Assessors.			Cases tried with the assistance of a Jury.			Cases tried with the assistance of the Law Officer.			Remarks.
Opinion given in accordance with the award.	Opinion given contrary to the award.	Total.	Opinion given in accordance with the opinion of Assessors.	Opinion given contrary to the opinion of Assessors.	Total.	Opinion given in accordance with the verdict.	Opinion given contrary to the verdict.	Total.	Opinion passed in accordance with the Futwa.	Opinion passed contrary to the Futwa.	Total.	

Judge's rules, para. 25.

APPENDIX D. No. 6.

STATEMENT No. 2.

Monthly and Annual.

Detail of Heading No. 41, Statement No. 1.—Part 1.

Index.	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.	22.	23.	24.	Remarks.
	Description of crimes.	Under trial at the close of ——			Persons committed during the ——	Received back after reference to the Nizamut Adawlut.		Received by transfer.		Total of persons under trial.	Commitments cancelled.		Convicted and punished.		Referred to the Nizamut Adawlut.		Acquitted and discharged.		Died.	Escaped.	Transferred.	Under trial at the close of ——			
		Cases.	Prisoners in jail.	Persons on bail.		Cases.	Persons.	Cases.	Persons.		Cases.	Persons.	Cases.	Persons.	Cases.	Persons.	Cases.	Persons.				Cases.	Prisoners in jail.	Persons on bail.	
	Judge's rules, para. 26. *Magistrate's rules, paras.* 61 *and* 62.																								

Part 2. Attempts.

APPENDIX D. No. 7.

STATEMENT No. 3, Part 1.

Monthly and Annual.

Statement of Prisoners required to furnish Security for good conduct or to keep the peace, whose cases were revised by the Session Judge of ———— during ————

1.	2.	3.	4.	5.	6.
Magistracy.	Prisoners whose cases have been revised.	Ordered to be released.		Ordered to remain in confinement until they find Security.	
		On Moochulka.	Without Moochulka.	Security reduced.	Security as before.
Total, ...					

APPENDIX D. No. 8.

STATEMENT No. 3, Part 2.

Monthly.

Calendar of Prisoners detained on requisition of Security for good conduct or to keep the peace, in the Jail of Zillah ————, whose cases were revised by the Session Judge during the ———— 18

1.	2.	3.	4.	5.	6.	7.
Number.	Names of Prisoners.	Age.	Sex.	Religion and Cast.	Date and grounds of the order of the Magistrate.	Date and substance of the order of the Session Judge.
	Judge's rules, para. 28.					

APPENDIX D. No. 9.

STATEMENT No. 4.

Monthly and Annual.

Statement showing the number of appeals preferred from the orders of the Magistrates, Joint Magistrates, and Assistants with special powers, of Zillah ———— to the Session Judge, in Criminal Trials and in Proceedings other than Criminal Trials, during the ———— with the orders passed thereon.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.
		Appeals from the orders passed in Criminal Trials.								Appeals from Orders in Cases of a miscellaneous nature other than Criminal Trials.							
Magistracy.	From the orders of the	Pending on ———	Preferred during the ———	Total.	Appeals rejected.	Order confirmed.	Order modified or reversed.	Pending at the close of ———	Longest period during which any undecided case has been pending.	Pending on ———	Preferred during the ———	Total.	Appeals rejected.	Order confirmed.	Order modified or reversed.	Pending at the close of ———	Longest period during which any undecided case has been pending.
	Magistrate, ...																
	Joint Magistrate, ...																
	Assistant, ...																
	Deputy Magistrate, ...	*Judge's rules, paragraphs 29 and 55.*								*Judge's rules, paragraph 30.*							
	P. S. Ameen, ...																
	S. Ameen, ...																
	Law Officer, ...																
	Total, ...																
	Magistrate, ...																
	Joint Magistrate, ...																
	Assistant, ...																
	Deputy Magistrate, ...																
	P. S. Ameen, ...																
	S. Ameen, ...																
	Law Officer, ...																
	Total, ...																
	Magistrate, ...																
	Joint Magistrate, ...																
	Assistant, ...																
	Deputy Magistrate, ...																
	P. S. Ameen, ...																
	S. Ameen, ...																
	Law Officer, ...																
	Total, ...																

APPENDIX D. No. 10.

STATEMENT No. 5.

Monthly and Annual.

Abstract of Sessions Operations for the month of ————

	Number of Cases.	Nominal number of Persons.	True number of Persons.	
1. Pending on ————				*Judge's rules, para.* 31.
2. Committed in ————				
3. Received back from the Nizamut Adawlut,				
4. Received by transfer, ...				
5. ..... Total,.....				
6. Commitments cancelled, ...				
7. Punished without reference, ...				
8. Referred to the Nizamut Adawlut,.....				
9. Acquitted, ...				
10. Died,.....				
11. Escaped, ...				
12. Transferred,.....				
13. ..... Total,.....				
14. Pending at the close of ————				

APPENDIX D. No. 11.

STATEMENT No. 6.

Monthly.

Abstract Statement of Prisoners punished without reference to the Nizamut Adawlut by the Sessions Judge of Zillah ————, at the Jail Delivery, for the month of ———— — 184—.

1.	2.	3.	4.	5.	6.	7.	8	9.	10.	11.	12.	13.
Number of case and the month in which it was committed.	The number of the Prisoners.	Number of Crime corresponding with Statement No. 1.	Names of Prisoners.	Sex.	Age.	Religion and Cast.	Profession.	Crime charged, when perpetrated, name of committing Officer, and date of commitment.	Crime established.	Convicted on violent presumption or on full legal proof.	Sentence of the Session Judge and when it was passed.	Explanation and Remarks.
Judge's rules, paras. 32, 56, 57, 58 *and* 59.	*Judge's rules, para.* 33.	*Judge's rules, para.* 34.						*Judge's rules, para.* 61.				*Judge's rules, para.* 39.

APPENDIX D. No. 12.

STATEMENT No. 7.

Monthly.

Register of Criminal Trials referred to the Nizamut Adawlut at the Sessions of Jail Delivery of Zillah ———, by ———, in the month of ——— 184—.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.	22.	23.	24.	25.	26.
Number of case and the month in which it was committed.	Number of Prisoners.	Number of crime corresponding with Statement No. 1.	Names of Prisoners.	Crime charged.	Number of case and prisoners in the Magistrate's Calendar.		How tried; by Mahomedan Law, or with the aid of Punchayet, Assessors or Jury.	Crime established in the opinion of the Mahomedan Law Officers, Punchayet, Assessors or Jury.	Crime established in the opinion of the Sessions Judge with his recommendation.	Date of occurrence of crime.	Date of apprehension of Prisoners.	Date of commitment and the name and official designation of the committing Officer.	Date of commencement of trial.	Date of conclusion of trial.	Date of reference to the Nizamut Adawlut.	Date of receipt of the record of the trial by the Nizamut Adawlut.	If postponed for further evidence.				Crime established in the opinion of the Nizamut Adawlut.	Sentence of the Nizamut Adawlut.	By what Judge passed.	Date of sentence.	Date of issue of sentence.
					Number.	Calendar.											Order by what Judge passed.	Date of order.	Date of issue of order.	Date of receipt of further evidence by Nizamut Adawlut.					
Judge's rules, paras. 35, *and* 32 *to* 34. *Judge's rules, paras.* 56, 57, 58 *and* 59.												*Judge's rules, para.* 61.		*Judge's rules, para.* 36.											

Judge's rules, para. 37. *The first* 16 *columns to be filled up by the Session Judge, and the remaining columns in the office of the Nizamut Adawlut.*

APPENDIX D. No. 13.

STATEMENT No. 8.

Monthly.

Abstract Statement of Prisoners acquitted by the Session Judge of Zillah ————, at the Jail Delivery, for the Monthly Sessions of ———— 184—.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.
Number of case and the month in which it was committed.	The numbers of the Prisoners.	Number of crime corresponding with Statement No. 1.	Names of Prisoners.	Sex.	Age.	Religion and Cast.	Profession.	Crime charged, when perpetrated, date of commitment, and name and official designation of the committing Officer.	Acquitted for want of proof of guilt or on clear proof of innocence.	Sentence of the Session Judge and when passed.	Explanation and Remarks.
Judge's rules, para. 38, *and paras.* 32, 33 *and* 34.								*Judge's rules, para.* 61.			*Judge's rules, para.* 39.
Judge's rules, paras. 56, 57, 58 *and* 59.											

APPENDIX D. No. 14.

STATEMENT No. 9.

Monthly.

Register of Criminal Trials called for by the Nizamut Adawlut on perusal of the periodical Statements or on presentation of Appeal from Zillah ———, in the month of ——— 184—.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.	22.	23.	24.	25.	26.	27.
Number of case and the month in which it was committed.	Number of prisoners.	Number of crime corresponding with statement No. 1.	Names of prisoners.	Crime charged.	Number of case and prisoners in the Magistrate's calendar.		How tried; by Mahomedan Law, or with the aid of Punchayet, Assessors or Jury.	Crime established in the opinion of the Mahomedan Law Officers, Punchayet, Assessors or Jury.	Crime established in the opinion of the Session Judge with his sentence.	Date of occurrence of crime.	Date of apprehension of prisoners.	Date of commitment and name and official designation of the committing officer.	Date of commencement of trial.	Date of conclusion of trial.	Date of order of Nizamut Adawlut calling for the trial.	Date of dispatch of the trial to the Nizamut Adawlut.	Date of receipt of the record of the trial by the Nizamut Adawlut.	If postponed for further evidence.				Crime established in the opinion of the Nizamut Adawlut.	Sentence of the Nizamut Adawlut.	By what Judge passed.	Date of sentence.	Date of issue of sentence.
					Number.	Calendar.												Order by what Judge passed.	Date of order.	Date of issue of order.	Date of receipt of further evidence by Nizamut Adawlut.					
Judge's rules, paras. 40, 56, 57, 58 *and* 59.												*Judge's rules, para.* 61.			*Judge's rules, para.* 42.											

Judge's rules, para. 41, *and paras.* 32, 33 *and* 34.

Judge's rules, para. 41. *Columns* 1 *to* 17 *are to be filled up by the Session Judge, and the remaining columns in the office of the Nizamut Adawlut*

APPENDIX D. No. 15.

STATEMENT No. 10.

Monthly.

Calendar of Trials postponed at the Jail Delivery of Zillah ———, for the month of ——— 184—.

1.	2.	3.		4.	5.	6.		7.	8.
Number of Prisoners.	Number of Crime corresponding with Statement No. 1.	Date of Commitment to the Sessions, and date proposed by the Magistrate for the attendance of parties.		Names of Prisoners.	Charge.	Date fixed by Session Judge for attendance of parties, and date of arrival in his Court of parties, &c.		Grounds and date of postponement, or, if the trial should not have been commenced upon, cause of delay on the part of the Session Judge in taking it up.	If decided since the close of the month to which the statement refers, date of decision.
		Date of Commitment and name and official designation of the committing Officer.	Date proposed by the Magistrate.			Date fixed by Session Judge.	Date on which the parties and mist arrived in the Sessions Court.		
		Judge's rules, para. 61.							

Judge's rules, paras. 43, 44 *and* 45; *and paras.* 56, 57, 58, 59 *and* 60.

APPENDIX D No. 16.

STATEMENT No. 11.

Annual.

Annual Statement of Persons confined in the Jails of the several Zillahs of the ———— Division during the year 184—, on requisition of Security for good conduct or to keep the peace.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	
					Released during the year.								
ZILLAH.	Under the orders of the ———	In confinement on the 1st ——— 184—.	Ordered to furnish Security during the year.	Total.	On furnishing the required Security.	On furnishing reduced Security.	On Moochulka.	Unconditionally.	Transferred to other districts to give Security.	Died.	Escaped.	In confinement on the ——— 184—.	REMARKS.
Total,....													

APPENDIX D. No. 17.

STATEMENT No. 12.

Annual.

Statement of the average time occupied in the disposal of Cases in the Sessions Court of Zillah ———, during the ——— 184—.

1.	2.	3.	4.	5.	6.
Number of case.	Number of days between date of commitment and date fixed by the Magistrate for trial.	Ditto between the date fixed by the Magistrate and the date on which the trial commenced.	Date between the commencement and conclusion of the trial.	Total number of days.	REMARKS.
Judge's rules, para. 47.					The total of Column 5 divided by the total of Column 1 gives ——— days the average time occupied by the disposal of each case.
Total, ...					

APPENDIX D. No. 18.

STATEMENT No. 13.

Annual.

Particulars regarding persons employed as Punchayet, Assessors, and Jury, under Regulation VI. of 1832, during the year 184—, in the Sessions Court of Zillah ———

1.	2.	3.	4.	5.	6.	7.	8.	9.
Name.	Cast.	Residence.	Occupation.	Number of cases in which employed during the year.	Number of findings acquiesced in by the Session Judge in full.	Number of findings acquiesced in by the Session Judge in part.	Number of findings differed from by the Session Judge.	REMARKS.
Judge's rules, para. 48.								

APPENDIX D. No. 19.

STATEMENT No. 9 A.

Monthly and Annual.

Statement showing the number of Appeals preferred from the orders of the Assistant to the Magistrate, Principal Sudder Ameen, Sudder Ameen and Law Officer of Zillah ——————, to the Magistrate or other Officer exercising the powers of Magistrate in Criminal Trials and in proceedings other than Criminal Trials during the month of ——————, with the orders passed thereon.

Judge's rules, para. 49.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.
		Appeals from orders passed in Criminal Trials.								Appeals from orders passed in proceedings other than Criminal Trials.							
Magistracy.	From the orders of	Pending on the ———	Preferred during the ———	Total.	Appeal rejected.	Order confirmed.	Order modified or reversed.	Pending at the close of ———	Longest period during which any undecided case was pending.	Pending on the ———	Preferred during the ———	Total.	Appeal rejected.	Order confirmed.	Order modified or reversed.	Pending at the close of ———	Longest period during which any undecided case was pending.
	Assistant to the Magistrate, ...																
	Principal Sudder Ameen, ...																
	Sudder Ameen, ...																
	Law Officer, ...																
	Total, ...																
	Assistant to the Magistrate, ...																
	Principal Sudder Ameen, ...																
	Sudder Ameen, ...																
	Law Officer, ...																
	Total, ...																
	Assistant to the Magistrate, ...																
	Principal Sudder Ameen, ...																
	Sudder Ameen, ...																
	Law Officer, ...																
	Total, ...																
	Assistant to the Magistrate, ...																
	Principal Sudder Ameen, ...																
	Sudder Ameen, ...																
	Law Officer, ...																
	Total, ...																

APPENDIX E.

APPENDIX E. No. 1.

STATEMENT No. 1, PART 1.

Monthly and Annual.

Statement of Crimes committed in Zillah ———, in the ———, and of the number of persons under trial, convicted, and acquitted before the Assistants, Principal Sudder Ameens and Sudder Ameens, and before the Magistrate and Joint Magistrate, the number committed to take their trial at the Sessions, and the number under trial at the close of ————

OFFICERS EMPLOYED AS MAGISTRATES, JOINT MAGISTRATES AND ASSISTANTS.

Mr. from to

Mr. from to

Mr. from to

Mr. from to

Magistrate's rules, paras. 1 *to* 5, 112 *and* 113.

	DESCRIPTION OF CRIMES. *Magistrate's rules, paras.* 6 *to* 12 *and* 95.	2. No. of crimes ascertained to have been committed in —	3. Under trial at the close of — Cases.	4. Under trial at the close of — Prisoners in jail.	5. Under trial at the close of — Persons on bail.	6. No. of cases and persons brought to trial during the — Cases.	7. No. of cases and persons brought to trial during the — Persons.	8. Received by transfer. Cases.	9. Received by transfer. Persons.	10. Total number of persons under trial.	11. Disposed of on trial. Convicted.	12. Disposed of on trial. Committed.	13. Disposed of on trial. Acquitted.	14. Died.	15. Escaped.	16. Transferred.	17. Under trial at the close of — Cases.	18. Under trial at the close of — Prisoners in jail.	19. Under trial at the close of — Persons on bail.
1	Murder, ... By Thugs, ...	*Magistrate's rules, paras.* 13 *and* 89.	*Magistrate's rules, paras.* 3 *to* 5. *If case lies over from preceding month, and assumes a graver aspect, see para.* 90.			*Magistrate's rules, paras.* 15, *and* 91 *to* 93. *Crimes committed in foreign territory, para.* 94.		*Magistrate's rules, para.* 16.		*Magistrate's rules, para.* 17.	*Magistrate's rules, paras.* 9 *and* 18.	*Magistrate's rules, paras.* 9, 19 *and* 24.	*Magistrate's rules, paras.* 9 *and* 25.	*Magistrate's rules, para.* 26.	*Magistrate's rules, para.* 27.	*Magistrate's rules, para.* 28.	*Magistrate's rules, para.* 29.	*Magistrate's rules, paras.* 30 *to* 32.	*Magistrate's rules, paras.* 33 *and* 34.
2	Murder, ... On the river, ...																		
3	Murder, ... Other cases, ... *Magistrate's rules, para.* 135.																		
4	Wounding with intent to murder, ...																		
5	Homicide, culpable, ...																		
6	Dacoitee, ... With murder, ...																		
7	Dacoitee, ... With torture, ...																		
8	Dacoitee, ... With wounding or personal injury, ...																		
9	Dacoitee, ... Unattended with aggravating circumstances, ...																		
10	River Dacoitee, .. With murder, ...																		
11	River Dacoitee, .. With wounding or personal injury, ...																		
12	River Dacoitee, .. Unattended with aggravating circumstances, ...																		
13	Highway robbery, With murder, ...																		
14	Highway robbery, With wounding or personal injury, ...																		
15	Highway robbery, Unattended with aggravating circumstances, ...																		
16	Burglary, ... With murder, ...																		
17	Burglary, ... With wounding or personal injury, ...																		
18	Burglary, ... Unattended with aggravating circumstances, ...																		
19	Theft, ... With murder, ...																		
20	Theft, ... ———— of children for their ornaments, ...																		
21	Theft, ... With wounding or personal injury, ...																		
22	Theft, ... By administering poisonous or stupifying drugs, ...																		
23	Theft, ... Other cases, ...		*	*		*		*			*	*	*	*	*	*		*	*
24	Cattle Stealing, With murder, ...																		
25	Cattle Stealing, With wounding or personal injury, ...																		
26	Cattle Stealing, Unattended with aggravating circumstances, ...																		
27	Child Stealing, For the purpose of selling into slavery, ...																		
28	Child Stealing, For other illegal purposes, ...																		
29	Receiving stolen or plundered property knowingly, ...																		
30	Importation of slaves, and sales or purchase of imported slaves, ...																		
31	Affrays and Riots, With homicide, ... *Magistrate's rules, paras.* 19 *and* 135.																		
32	Affrays and Riots, With violent breach of the peace, *Magistrate's rules, paras.* 19 *and* 135.																		
33	Assaults with wounding or personal injury, ...																		
34	Arson, ...																		
35	Forgery or uttering forged documents or papers, ...																		
36	Counterfeiting Coin or uttering base Coin, ...																		
37	Perjury or Subornation of Perjury, ...																		
38	Rape, ...																		
39	Adultery, ...																		
40	Suttee aiding and abetting, ...																		
41	Crimes and offences not specified above, ...																		
42	Attempts to commit any of the above, ...																		
	Total, ...																		

What charges are not to be entered herein:—Magistrate's rules, para. 36.

As regards the corresponding aggregates of columns marked, see Magistrate's rules, para.* 35.

APPENDIX E. No. 2.

STATEMENT No. 1, Part 2.

Number apprehended during the ———— or attending on summons, as per column 7, part 1.

By the Police Officers.	By the Magistrate and his subordinates.	Total.
Magistrate's rules, paras. 37, 91, 92, *and* 94.	*Magistrate's rules, paras.* 38 *and* 94.	*Magistrate's rules, para.* 39.

APPENDIX E. No. 3.

STATEMENT No. 1, Part 3.

Number of persons apprehended, sent in, or released by the Police.

Magistrate's rules, para. 40.

1. Total number of persons apprehended, ...	*Magistrate's rules, para.* 41.
2. Sent in by order of the Magistrate issued in consequence of the Police Officer's report, ... *Magistrate's rules, para.* 108. 3. Sent in by the Police Officer of his own authority, ... 4. Released on Bail, ... *Magistrate's rules, para.* 108. 5. Pending investigation at the Thana, ...	*Magistrate's rules, paras.* 42, 91, *and* 92.
Magistrate's rules, para. 107. Total,....	

APPENDIX E. No. 4.

STATEMENT No. 1, Part 4.

Details of columns 11 to 13.

	1.	2.	
	Disposed of.		
	Cases.	Persons.	
Magistrate, ... Joint Magistrate, ... Assistant, ... Deputy Magistrate, ... Principal Sudder Ameen, ... Sudder Ameen, ... Law Officer, ...	*Magistrate's rules, para.* 44.	*Magistrate's rules, para.* 45.	*Magistrate's rules, paras.* 43 *and* 93.
Total,....			

APPENDIX E. No. 5.

STATEMENT No. 1, Part 5.

Details of columns 17, 18 and 19, part 1.

	1. Col. 17. Cases.	2. Col. 18. In jail.	3. Column 19. On bail.	4. On recognizance.	5. Total.	
Section 1st.						*Magistrate's rules, para.* 46.
Before the Magistrate,						
" Joint Magistrate,						
" Assistant,						
" Deputy Magistrate,						
" Principal Sudder Ameen,						
" Sudder Ameen,						
" Law Officer,						
Total,						
Section 2nd.						*Magistrate's rules, paras.* 47 *and* 48.
Under trial since 18						
18						
18						
Total,						

APPENDIX E. No. 6.

STATEMENT No. 1, Part 6.

Details of columns 11 and 13, part 1.

	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.
	Detail of Convictions.										Detail of Acquittals.				
	3 years.	Above 2 years.	Above 1 year.	Above 6 months.	Not exceeding 6 months.	Fined.	Security.	Dismissed from Office.	Flogged.	Total.	Default.	Compromise.	Recognizance.	Unconditional.	Total.
Magistrate,	*Magistrate's rules, para.* 49.					*Magistrate's rules, para.* 51.				*Magistrate's rules, para.* 52.					*Magistrate's rules, para.* 54.
Joint Magistrate,															
Assistant,															
Deputy Magistrate,															
Principal Sudder Ameen,															
Sudder Ameen,															
Law Officer,															
Total,															

APPENDIX E. No. 7.

STATEMENT No. 1, Part 7.

Details of column 6, Part 6.

	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.
	200 Rs.		Exceeding Rupees								Not exceeding		Total.				
			100.		50.		25.		10.		10.						
	Persons.	Amount.	Persons.	Amount.	Persons.	Amount.	Persons.	Amount.	Persons.	Amount.	Persons.	Amount.	Persons.	Amount.	Amount realized.	Fines imposed in addition to other punishment.	Amount realized.
Magistrate, ...													*Magistrate's rules, para. 56.*		*Magistrate's rules, paras. 57 and 97.*	*Magistrate's rules, para. 58.*	
Joint Magistrate, ...																*Magistrate's rules, para. 98.*	*Magistrate's rules, para. 97.*
Assistant, ...																	
Deputy Magistrate, ...																	
Principal Sudder Ameen,																	
Sudder Ameen, ...																	
Law Officer, ...																	
Total, ...																	

APPENDIX E. No. 8.

STATEMENT No. 1, Part 8.

	Under trial during the month.	Under trial at the close of the month.	
		In jail.	On bail.
Males, ...	*Magistrate's rules, para. 59.*	*Magistrate's rules, para. 60.*	
Females, ...			
Corresponding with cols. 10 and 18 and 19, part 1, ...			
Implicated in more than one offence, ...			
The actual number of persons, ...			
Males, ...			
Females, ...			

APPENDIX E. No. 9.

STATEMENT No. 1, Part 9.

Operation of Act III. of 1844. Details of the persons punished under Act III. of 1844, and entered in part 6, column. 9.

1.	2.	3.	
No. of stripes.	Adult offenders.	Juvenile offenders.	
30		*	*If the total does not correspond with the number entered in column 9, of part 6, the cause of difference is to be noted in the remarks.*
25		*	
20		*	
15		*	
10			
8			
6			
5			
4			
3			
2			
1			
Total, ...			*Magistrate's rules, para.* 110.

APPENDIX E. No. 10.

STATEMENT No. 1, Part 10.

Operation of Act V. of 1844. Detail of fines imposed under the above Act and entered in column 6, part 6.

No. of prisoners punished.	Amount imposed under Section 2.	Amount imposed under Section 3.	Amount realized.
			Magistrate's rules, para. 110.

APPENDIX E. No. 11.

STATEMENT No. 2, PART 1.

Monthly and Annual.

Detail of heading No. 41, Statement No. 1, Part 1.

	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.
INDEX.	Description of crimes.	Number of crimes ascertained to have been committed in ———	Under trial at the close of ———			No. of cases and persons brought to trial during the ———		Received by transfer.		Total number of persons under trial.	Disposed of on trial.			Died.	Escaped.	Transferred.	Under trial at the close of ———		
			Cases.	Prisoners in jail.	Persons on bail.	Cases.	Persons.	Cases.	Persons.		Convicted.	Committed.	Acquitted.				Cases.	Prisoners in jail.	Persons on bail.
	Magistrate's rules, para. 61. *See also paras.* 19, 20, *and* 125.																		

PART 2. Attempts.

	Magistrate's rules, para. 62.																		

APPENDIX E. No. 12.

STATEMENT No. 2, Part 3.

Abstract of the Magistrate's Diary of the Witness in attendance in —— 184—.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.
	Witnesses discharged during the month with specification of the time they were detained previous to dismissal.														Remarks.
Section 1st.	1 Day.	2 Days.	3 Days.	4 Days.	5 Days.	6 Days.	7 Days.	8 Days.	9 to 15 days.	16 to 22 days.	23 to 30 days.	Above 30 days.	Total.	Longest period any person of those entered in col. 13 has been in attendance.	
Mr.														*Magistrate's rules, para.* 121.	
Mr.	*Magistrate's rules, paras.* 117, 118, *and* 122 *to* 124.														
Mr.															
Magistrate's rules, para. 137.															
Total, ..															
Section 2nd.	Witnesses in attendance at the close of the month, exclusive of those under Sect. 1st, with specification of the time they have been in attendance.														
Mr.															
Mr.															
Mr.															
Magistrate's rules, para. 119.															
Total, ..															
Section 3rd.															
Grand total of persons in attendance during the period.															

Magistrate's rules, para. 120.

APPENDIX E. No. 13.

STATEMENT No. 2, PART 4.

Persons in custody in default of Security.

	1.	2.	3.	4.	5.	6.	7.	
or good conduct confined under the order of	In jail on —	Imprisoned during —	Total.	Released during —	In jail at the end of —	Less than 3 years.	Upwards of 3 years.	
Nizamut Adawlut, ...								*Magistrate's rules, para.* 71.
Commissioner, ...								
Session Judge, ...								
Magistrate, ...								
Joint Magistrate, ...								
Total, ...								

APPENDIX E. No. 14.

STATEMENT No. 2, PART. 5.

Particulars of column 7, part 4, of Persons confined upwards of 3 years.

Names of Prisoners.	Date of the original order.	Date of last renewal.	Authority renewing the order.	
				Magistrate's rules, para. 72 *and* 136.

APPENDIX E. No. 15.

STATEMENT No. 2, PART 6.

Prisoners in custody in default of Security or penal recognizance to keep the peace on conviction of any specific offence under col. 1, sect. 2, Reg. IV. 1825.

Names.	Amount of Security required.	Term of imprisonment in default.	Date of order and by whom passed.	Causes of requisition of Security and other remarks.

APPENDIX E. No. 16.

STATEMENT No. 3.

Monthly and Annual.

Persons under Commitment when the Statement closed.

PART 1. Committed.	1. In jail. Persons.	2. On bail. Persons.	3. Total. Persons.	4. Total. Cases.
In former months [or year]	*Magistrate's rules, para.* 74.			
In the month of —— [or year]				
Total, ...				
PART 2.				
Detail of former months [or year.]	*Magistrate's rules, para.* 75.			
In ———— 184				
In ———— 184				
In ———— 184				
In ———— 184				
Total, ...				

APPENDIX E. No. 17.

STATEMENT No. 4.

Monthly and Annual.

Abstract Statement of Summary Suits for forcible dispossession under Act IV. of 1840, decided and depending.

1.	2. Pending at the close of ——	3. Instituted during the month of ——	4. Received by transfer.	5. Total to be disposed of.	6. Decided on their merits.	7. Adjusted or withdrawn.	8. Dismissed on default.	9. Transferred.	10. Pending on the ——	11. Pending above 3 months.	12. Explanation of entries in col. 11.
Mr. ———— *Magistrate.*											*Magistrate's rules, para.* 76.
Mr. ———— *Joint Magistrate.*											
Mr. ————											
Total, ...											

APPENDIX E. No. 18.

STATEMENT No. 5.

Monthly and Annual.

Number of Prisoners whose cases were under reference to the Nizamut Adawlut at the close of ———.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.
No. of Cases.	Number of the Prisoners.	Names of Prisoners.	Number of the crimes.	Crimes charged.	Number of Prisoners in each case.			Date of order of reference.	Remarks by the Magistrate and Session Judge.	Remarks by the Nizamut Adawlut.
					In jail.	On bail.	Total.			
Magistrate's rules, paras. 77 *and* 78.										

APPENDIX E. No. 19.

STATEMENT No. 6.

Monthly and Annual.

Abstract Statement of the Criminal business disposed of and pending in Zillah ———, for ——— , 184—.

	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.
	Heinous offences.		Petty offences.		Appeals.		Proceedings from other Zillahs.		Applications and petitions of every other description.		Cases prepared by the subordinate Officers.	
	Disposed of.	Pending.	Disposed of.	Pending.	Disposed of.	Pending.	Disposed of.	Pending.	Disposed of.	Pending.	For the Magistrate.	For the Joint Magistrate.
Magistrate, ...	*Magistrate's rules, para.* 79.										*Magistrate's rules, para.* 111.	
Joint Magistrate, ...												
Assistant,.....												
Deputy Magistrate, ..												
P. S. Ameen, ...												
S. Ameen, ...												
Law Officer, ...												
Total, ...												

APPENDIX E. No. 20.

STATEMENT No. 7.

Annual.

Abstract of the Calendar of Persons convicted, committed, and acquitted by the Magistrate, Joint Magistrate, Assistant, Principal Sudder Ameen, Sudder Ameen, and Law Officer of Zillah ————, for the year 184—.

	1.	2.	3.	4.	5.	6.	7.	8.	
	Convicted.		Committed.		Acquitted.		Total.		
Names of Officers.	Cases.	Persons.	Cases.	Persons.	Cases.	Persons.	Cases.	Persons.	Remarks.
Mr.									
Mr.									
Mr.									
Magistrate's rules, para. 82.									
Total,....									

APPENDIX E. No. 21.

STATEMENT No. 8.

Annual.

Average period which intervened between the date of apprehension, or attendance on Summons, and the disposal of the case in the Magistrate's Court of Zillah ————, for the year 184—.

	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.
	Cases in which the Agency of the Police was employed.									Cases in which the Agency of the Police was not employed.				
	Number of cases.	Number of days pending in the Mofussil.	Number of days pending before the Magistrate.	Total number of days.	Average time occupied in the Mofussil.	Average time occupied before the Magistrate.	General Average.	Longest time a case was pending.	Shortest time a case was pending.	Number of cases.	Number of days pending.	Average time.	Longest time.	Shortest time.
January,.....														
February, ...														
March, ...														
April, ...														
May, ...														
June, ...	*Magistrate's rules, paras.* 83 *and* 84; *and* 103, 104, 126, *and* 133.													
July, ...														
August, ...			*Magistrate's rules, para.* 102.		*Magistrate's rules, para.* 127.	*Magistrate's rules, para.* 128.	*Magistrate's rules, para.* 129.	*Magistrate's rules, para.* 130.	*Magistrate's rules, para.* 131.			*Magistrate's rules, para.* 132.	*Magistrate's rules, para.* 130.	*Magistrate's rules, para.* 131.
September,.....														
October,.....														
November,.....														
December, ...														
Total,....														

APPENDIX E. No. 22.

STATEMENT No. 9.

Monthly and Annual.

Statement showing the number of Appeals preferred from the orders of the Assistant to the Magistrate, Principal Sudder Ameen, Sudder Ameen and Law Officer of Zillah ——————, to the Magistrate or other Officer exercising the powers of Magistrate, in Criminal Trials and in Proceedings other than Criminal Trials, during the —————— with the orders passed thereon.

Magistrate's rules, para. 85.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.
	Appeals from orders passed in criminal trials.								Appeals from Orders in Judicial Proceedings other than than criminal trial.							
From the orders of the	Pending on —	Preferred during the —	Total.	Appeals rejected.	Order confirmed.	Order modified or reversed.	Pending at the close of —	Longest period in days during which any undecided case has been pending.	Pending on —	Preferred during the —	Total.	Appeals rejected.	Order confirmed.	Order modified or reversed.	Pending at the close of —	Longest period in days during which any undecided case has been pending.
Assistant to the Magistrate,																
Deputy Magistrate, ...																
Principal Sudder Ameen,																
Sudder Ameen, ...																
Law Officer, ...																
Total, ...																

APPENDIX E. No. 23.

REMARKS.—[*To be inserted on the back of the Statements.*]

Part 1, *Statement No.* 1.

Out of the total number of entries in col. 2, under headings 18, 23, 26, and 42, —— were uninvestigated with reference to Regulation II. 1832, viz. under heading 18, —— cases; under heading 23, —— cases; under heading 26, —— cases; under heading 42, —— cases.

Magistrate's rules, para. 105.

Col. 13, *Part* 1, *Statement No.* 1.

Number of Persons acquitted, ...
Summoned by the Magistrate and his Subordinates, ...
Sent in by the Police, ...
Released on bail by the Police, and not required to appear before the Magistrate, ...

Magistrate's rules, paras. 93 *and* 134.

Magistrate's rules, paras. 80 *and* 81.

Note to be entered of the cases brought before the Magistrate as justice of the peace; or under Act 53rd, George III, Cap. 155.—*See Magistrate's rules, para.* 106.

APPENDIX E. No. 24.

Monthly Vernacular Statement of persons apprehended.—To be forwarded by the Magistrate monthly to the Session Judge. *L. P. No.* 9.—*W. P. No.* 8.

See C. O. Nos. 155 *and* 176 *of vol.* 2.

Note.—This form is translated from the Persian Statement annexed to the C. O. quoted above.

PART 1. Persons apprehended in former months, whose cases remained undecided at the close of June 1835.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
Number of case according to the registers of former months.	Number of prisoners.	Names of prisoners.	Abstract of the charge, and date thereof.	Date of apprehension of each prisoner.	Date of conviction, and nature of sentence.	Date of acquittal.	Date of commitment to the sessions.	Persons in jail, whose cases were pending at the close of the month, with date.	Explanation of the cause of detention of persons, whose cases were pending at the close of the month.
15	1	Shama.	Theft. February 19, 1835.	February 22, 1835.	6 months' imprisonment. June 6, 1835.	"	"	"	"
18	3	Lal Das. Goor Kishen. Hurree Kishen.	Highway robbery. March 16, 1835.	March 17, 1835.	"	June 5, 1835.	"	"	"

PART 2. Persons apprehended during the month of June, 1835.

1.	2.	3.	4.	5.	6.	7.	8.	9.		10.
Number of case according to the present month.	Number of prisoners.	Names of prisoners.	Abstract of the charge and date thereof.	Date of apprehension of each prisoner.	Date of conviction, and nature of sentence.	Date of acquittal.	Date of commitment to the sessions.	Persons in jail or on bail.		Remarks.
								In jail with date.	On bail with date.	
1	4	Munnee Ram. Dowlut. Ramzan. Bhowanie.	Theft. June 1, 1835.	June 3, 1835.	6 months' imprisonment. June 21, 1835.	"	"	"	"	"
2	2	Buddia. Atmah.	Burglary in the house of the prosecutor, Probo. June 6, 1835.	June 7, 1835.	"	June 15, 1835.	"	"	"	"

This is a very important statement; and, if carefully prepared and examined each month by the magistrate and the session judge, must enable these officers readily to ascertain the general state of criminal justice in the districts. If the heading of remarks be properly prepared, specifying the dates on which the case has been brought up for trial, and the reasons which have caused delay in bringing the case to a final decision, the magistrate, by calling for the proceedings, if necessary, and issuing such orders as each case may require, will be able to check the delays of his umlah, sudder and mofussil, whether arising from carelessness, neglect, or other cause; and he will be able to insert, for the information of the session judge, under the head of "remarks," the real cause of delay, and the measures he may have adopted to prevent further delay in passing final orders. The session judge, with this statement before him, will, by referring to the heads showing the date of apprehension and the nature of the crime, be able at once to exercise so very efficient a control over the magistrate's proceedings, that it will be scarcely possible that a prisoner should be needlessly detained in custody under examination, at present a very serious grievance to innocent persons. No English abstract at the foot of this statement is necessary. As this statement shows very distinctly the sentence passed in each case, the session judge can, without difficulty, detect any illegal or improper order, and he ought in all such cases immediately to call for the magistrate's proceedings, and to revise them.

APPENDIX E. No. 25.

MAGISTRATE'S STATEMENT.—*Sent Monthly to Government.*

Statement showing the Disposal of, and Casualties among, the Prisoners confined in the Jail at ———, during the month of ——— 184—.

		1.	2.	3.	4.	5.	6.	7.	8.	9.	
		Slept in jail on the —	Slept in Hospital on the —	Slept on the roads on the —	In transit on the —	Total.	Died.	Escaped.	Sent to other districts.	Released.	Remarks.
1	Prisoners of the District										
2	Prisoners from other Districts										
	Total, ...										

Cols. 1, 2, and 3 are intended to show the disposition of the prisoners on the date at which the statement closed, in the several proportions in which they slept within the walls of the jail, or in hospital, or on the roads, on that date.

Col. 4. Prisoners sent by the magistrate to other districts, but intelligence of whose arrival at their place of destination may not have reached him at the period of the statement being closed, are to be entered in this column under heading 1 or 2, as the case may be.

Col. 5 will be the aggregate of columns 1 to 4, and will show the total number of prisoners in the actual charge of the magistrate, whether appertaining to his own or other zillahs.

Col. 6. The magistrate shall only account for, and include in his monthly statements, such casualties as may occur among prisoners (whether of his own or other districts) *under his actual custody or charge.* Prisoners in progress to other districts, for work on the roads, or for other reasons, are to be borne on the 4th column of the statement for the district whence they are sent, until notification of their having reached their destination be received, when they will be struck off, and entered under the 1st heading (or prisoners of the district) in col. 8, and under the 2nd heading (or prisoners from other districts) in the proper column of the statement of the district to which they may be detached. A similar rule will apply to such prisoners returning from detached duty; and, on this principle, deaths happening among convicts in transit, either going or returning from detached duty, will be accounted for in the returns of the districts they are leaving; and, in respect both to casualties in transit and after arrival, the magistrate, to whose district the prisoners may be sent, on obtaining information thereof, will forward the warrant sent with the individuals so deceasing to the magistrate from whose district they came, endorsed with a certificate of death under his official seal and signature.

When the mortality may exceed one per cent. per mensem, the magistrate will require the medical officer in charge of the jail to put on record, in the column of remarks, his explanation of the cause of the excess, adding his own comments thereon; and, in cases of very extraordinary mortality, he will make a special report on the subject through the session judge, who will append his own observations on the subject.

Col. 7. The principle of the following rule regarding col. 8 will be applicable to the entry of prisoners in this column, whenever the contingency of escape during transit may occur.

Col. 8. All convicts, whether belonging to the district to which the statement refers, or to other districts, who may have been sent from the former elsewhere, and notification of whose arrival at the place of destination may have been received, are to be included in this column, under the heading which may be applicable to their cases.

Col. 9. Convicts of all descriptions who may have been released, will be entered in this column, under the proper heading.

APPENDIX E. No. 26.

STATEMENT No. 21.—*Sent Half Yearly to Government.*

Half Yearly Report of Criminal Prisoners confined in the Jail of Zillah ——— on the ——— 184—.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.
	Prisoners under sentence										
	Of imprisonment for life.	Of imprisonment for more than two years.	Of imprisonment for two years and above one year.	Of imprisonment for one year and under.	To furnish security for good conduct. Of dangerous character, to be confined till security be given.	To furnish security for good conduct. To be discharged without security at the end of a limitted period.	Committed to take their trial at the Sessions.	Whose cases are still under examination (Hajut Tujveez).	Prisoners who are not included in the preceding columns.	Total of all descriptions in Jail.	Number the Jail is capable of containing.
Under sentence of the Nizamut Adawlut, ...											
Ditto ditto Commissioner of Circuit, ...											
Ditto ditto Session Judge, ..											
Ditto ditto Magistrate and Joint Magistrate,.....											
Ditto ditto Assistants,.....											
Ditto ditto Sudder Ameens and Law Officer, ...											
Total,.....										Males, ... Females,..... Total, ...	In Male Wards,.. In Female ditto, Total, ...

Memorandum required by Circular Order No. 47, dated 8th May, 1840.

1.	Number and location of Prisoners sleeping outside Jail on ——			
	2. Stations.	3. No. of Prisoners.	4. Distance in miles from Jail.	5. Work on which employed and other Remarks.
Number of Prisoners actually sleeping in Jail on —				
Males, ..	At			
Females,	At			
	At			
	At			
Total,..	In Hospital.			
	Total,			

A.—Memorandum of the works on which the Prisoners sentenced to labor (columns 2, 3, 4, 6, and 7,) are employed.

Nature of employment.	No. of Prisoners.	Remarks.

B.—Explanation of ——— Prisoners in the 10th column, in excess of the aggregate in columns 2 to 9.

——— Prisoner confined on account of insanity, till he recovers his reason.

——— State Prisoner.

——— Prisoners whose trials are under reference to the Nizamut Adawlut

APPENDIX E. No. 27.

STATEMENT No. 22.—*Sent Half Yearly to Government.*

Half Yearly Report of Civil Prisoners confined in the Jail of Zillah———— on the ———— 184—.

1.	2.	3.	4.	5.	6.	7.	8.
	Prisoners the period of whose detention in Jail						
By order of the	Does not exceed one month.	Exceeds one and is less than three months.	Exceeds three and is less than six months.	Exceeds six and is less than twelve months.	Exceeds one year and is less than two years.	Exceeds two and is less than three years.	Exceeds three years.
Judge and other Judicial authorities, ...							
Collector, ...							
Total,.....							

Abstract.

In Jail on the ——— 184—. .

Admitted during the 6 months, ..

Total, ...

Released during the 6 months,....

In Jail on the ——— 184—.

A.—Explanation by the Judge of the cases of prisoners confined under his orders, or the orders of the Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, who have been confined one year and upwards.

1.	2.	3.	4.	5.	6.
No. of Prisoners.	No. of Cases.	Names of Prisoners.	Date on which they were confined.	Amount for which they are confined.	Remarks.

B.—Explanation by Collector of the cases of prisoners confined under his orders who have been confined one year and upwards.

1.	2.	3.	4.	5.	6.
No. of Prisoners.	No. of Cases.	Names of Prisoners.	Date on which they were confined.	Amount for which they are confined.	Remarks.

N. B.—This statement should be sent by the magistrate to the judge and the collector, in order that they may fill up the columns of explanation.

APPENDIX E. No. 28.

STATEMENT No. 23.—*Sent Half Yearly to Government.*

Return of Prisoners in the Jail of Zillah ———, under the direct orders of Government for reasons of State, &c. on the ——— 184—.

1.	2.	3.	4.	5.
Station.	Names of Prisoners.	Date of confinement.	Confined by what authority.	Remarks.

APPENDIX E. No. 29.

STATEMENT No. 24.—*Sent Half Yearly to Government.*

Surgeon's Report on the state of the Prisoners in the Jail of ———, during the ——— six months of 184—.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.
Months.	Average number of persons, sick and well, in the jail, during the month.	Number of sick prisoners in the Hospital during each month.	Sick persons out of Hospital in each month.	Total sick as specified in the preceding and following columns.	Cholera.	Dysentery or Diarrhœa.	Fever.	Other complaints.	Total cured.	Total deaths.	Total of sick remaining in and out of the Hospital at the end of each month.
Total, ...											

APPENDIX F.

APPENDIX F. No. 1.

Monthly and Annual.—C. O. Sup. Pol. No. 6 *of* 1845.

PART I.—Police Statement No. 1 A for the ———————— for the Superintendent of Police, Lower Provinces.

	1. Crime.	2. Number of cases ascertained to have been committed through the Police, or otherwise.	3. Supposed number of persons concerned.	4. Number of cases brought to trial, including transfers.	5. Prisoners in jail.	6. Persons on bail.	7. Number of persons acquitted by Magistrate and subordinates.	8. Number of persons acquitted by Session Judge.	9. Number of persons acquitted by Nizamut.	10. Number of persons convicted by Magistrate and subordinates.	11. Number of persons convicted by Session Judge.	12. Number of persons convicted by Nizamut.	13. Number of cases remaining.	14. Number of prisoners in jail.	15. Number of persons on bail.	16. Died.	17. Escaped.	18. Transferred.	19. Property stolen.	20. Property recovered.	REMARKS.
1	Murder, ... By Thugs, ...																				
2	Murder, ... On the River, ...																				
3	Murder, ... Other Cases, ...																				
4	Wounding with intent to murder, ...																				
5	Homicide, culpable, ...																				
6	Dacoitee, .. With murder, ...																				
7	Dacoitee, .. With torture, ...																				
8	Dacoitee, .. With wounding or personal injury, ...																				
9	Dacoitee, .. Unattended with aggravating circumstances,																				
10	River Dacoitee, ... With murder, ...																				
11	River Dacoitee, ... With wounding or personal injury, ...																				
12	River Dacoitee, ... Unattended with aggravating circumstances,																				
13	Highway robbery, ... With murder, ...																				
14	Highway robbery, ... With wounding or personal injury, ...																				
15	Highway robbery, ... Unattended with aggravating circumstances,																				
16	Burglary, .. With murder, ...																				
17	Burglary, .. With wounding or personal injury, ...																				
18	Burglary, .. Unattended with aggravating circumstances,																				
19	Theft, ... With murder, ...																				
20	Theft, ... Of children for their ornaments, ...																				
21	Theft, ... With wounding or personal injury, ...																				
22	Theft, ... By administering poisonous or stupifying drugs,																				
23	Theft, ... Other cases, ...																				
24	Cattle Stealing, ... With murder, ...																				
25	Cattle Stealing, ... With wounding or personal injury, ...																				
26	Cattle Stealing, ... Unattended with aggravating circumstances,																				
27	Child Stealing, ... For the purpose of selling into slavery, ...																				
28	Child Stealing, ... For other illegal purposes, ...																				
29	Receiving stolen or plundered property knowingly, ...																				
30	Importation of slaves, and sale or purchase of imported slaves,																				
31	Affray, ... With homicide, ...																				
32	Affray, ... With violent breach of the peace, ...																				
33	Assault with wounding or personal injury, ...																				
34	Arson, ...																				
35	Forgery or uttering forged documents or papers, ...																				
36	Counterfeiting Coin or uttering base Coin, ...																				
37	Perjury or Subornation of Perjury, ...																				
38	Rape, ...																				
39	Adultery, ...																				
40	Suttee, aiding and abetting, ...																				
41	Crime and offences not specified above, ...																				
42	Attempts to commit any of the above, ...																				
	Total, ...																				

Commitments are not to be inserted in this statement. The Magistrate's proceedings in such cases can be considered only preliminary; and all parties committed are to be retained in the statements as pending until their cases are finally disposed of by the Session Judge or the Nizamut Adawlut.

Detail of Heading 41.

APPENDIX F.—No. 1.—*(Continued.)*

Attempts.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.
Crime.	Number of cases ascertained to have been committed through the Police, or otherwise.	Supposed number of persons concerned.	Number of cases brought to trial including transfers.	Prisoners in jail.	Persons on bail.	Number of persons acquitted by Magistrate and subordinates.	Number of persons acquitted by Session Judge.	Number of persons acquitted by Nizamut.	Number of persons convicted by Magistrate and subordinates.	Number of persons convicted by Session Judge.	Number of persons convicted by Nizamut.	Number of cases remaining.	Number of prisoners in jail.	Number of persons on bail.	Died	Escaped.	Transferred.	Property stolen.	Property recovered.
Total, .																			

Annual note of cases committed still pending before Superior Court and Nizamut [*to be inserted at the foot of this statement*].

APPENDIX F. No. 2.

STATEMENT No. 1 A., PART II.—Number apprehended during ———— or attending on Summons, as per columns 5 and 6, part 1.

By the Police Officers.	By the Magistrate and his subordinates.	Total.

APPENDIX F. No. 3.

STATEMENT No. 1 A., PART III.—Number of Persons apprehended, sent in or released by the Police.

1. Total number of persons apprehended, ...
2. Sent in by order of the Magistrate issued in consequence of the Police Officer's report, ..
3. Sent in by the Police Officers on their own authority, ...
4. Released on bail, ...
5. Pending investigation at the Thana, ...

Total .....

NOTE.

	Persons apprehended.	Released.	Punished.	Pending.	REMARKS.
Summoned by the Magistrate, ...					
Sent by the Police Darogah, ...					
Total,.....					

APPENDIX F. No. 4.

PART IV.—Details of columns 7 to 13.

	1.	2.
	Disposed of.	
	Cases.	Prisoners.
Magistrate, ...		
Joint Magistrate, ...		
Assistant Deputy Magistrate, ...		
Principal Sudder Ameen, ...		
Sudder Ameen, ...		
Law Officer not being a Sudder Ameen, ...		
Total, ...		

MEMORANDUM.

	Number.	Enquired into at the requisition of the persons robbed.	Enquired into by order of the Magistrate.	Not enquired into under Regulation II. of 1832.
Theft, ...				
Burglary, ...				
Total, ...				

APPENDIX F. No. 5.

Monthly and Annual.

C. O. Sup. Pol. L. P. No. 1 *of* 1839.

Comparative Statement of Heinous Crimes committed in the District of ———— in the month of ———— 184—, and of the corresponding month in the preceding year.

	Description of Crimes.		In 184—.	In 184—.	Increase.	Decrease.
1	Murder, ...	By Thugs, ...				
2		On the river, ...				
3		Other cases, ...				
4	Wounding with intent to murder, ...					
5	Homicide, culpable, ...					
6	Dacoitee, ...	With murder, ...				
7		With torture, ...				
8		With wounding or personal injury, ...				
9		Unattended with aggravating circumstances,				
10	River Dacoitee, ..	With murder, ...				
11		With wounding or personal injury, ...				
12		Unattended with aggravating circumstances,				
13	Highway robbery,	With murder, ...				
14		With wounding or personal injury, ...				
15		Unattended with aggravating circumstances,				
16	Burglary, ...	With murder, ...				
17		With wounding or personal injury, ...				
18		Unattended with aggravating circumstances,				
19	Theft, ...	With murder, ...				
20		With murder of children for their ornaments,				
21		With wounding or personal injury, ...				
22		By administering poisonous or stupifying drugs,				
23		Other cases, ...				
24	Cattle Stealing, ..	With murder, ...				
25		With wounding or personal injury, ...				
26		Unattended with aggravating circumstances,				
27	Child Stealing, ..	For the purpose of selling into slavery, ...				
28		For other illegal purposes, ...				
29	Receiving stolen or plundered property knowingly, ...					
30	Importation of slaves, and sale or purchase of imported slaves, ...					
31	Affray, ...	With homicide, ...				
32		With violent breach of the peace, ...				
33	Assaults with wounding or personal injury, ...					
34	Arson, ...					
35	Forgery or uttering forged documents or papers, ...					
36	Counterfeiting Coin or uttering base Coin, ...					
37	Perjury or subornation of Perjury, ...					
38	Rape, ...					
39	Adultery, ...					
40	Suttee, aiding and abetting, ...					
41	Crimes and offences not specified above, ...					
42	Attempts to commit any of the above, ...					
	Total, ...					

APPENDIX F. No. 6.

Monthly and Annual.

C. O. Sup. Pol. L. P. No. 1 *of* 1839. *See para.* 1541.

Report of Dismissals and Appointments of Police Officers of Zillah ————, for the ————

Officers Dismissed.					Officers Appointed.				
Name with name of the Father.	Age.	Place of Residence.	Situation or Office.	Cause of dismissal with the date of it.	Name with name of the Father.	Age.	Place of Residence.	Date of appointment.	Previous employment.

From the annual return are to be excluded cases of persons dismissed, but reinstated by the Superintendent of Police within the year.

APPENDIX F. No. 7.

Monthly and Annual.

C. O. Sup. Pol. L. P. No. 1 *of* 1839. *See para.* 1935.

Report of Dismissals and Appointments of Ministerial Officers of ————, for the ————

Officers Dismissed.					Officers Appointed.				
Name with name of the Father.	Age.	Place of Residence.	Situation or Office.	Cause of dismissal with the date of it.	Name with name of the Father.	Age.	Place of Residence.	Date of appointment.	Previous employment.

From the annual return are to be excluded cases of persons dismissed, but reinstated by the Superintendent of Police within the year.

APPENDIX F. No. 8.

Monthly and Annual.

C. O. Sup. Pol. L. P. No. 18 *of* 1843.

List of Persons convicted and acquitted in serious cases in Zillah ————, during the month of ———— .

Convicted with date.	Crime.	Name of Prisoner.

Acquitted with date.	Crime.	Name of Persons acquitted.

APPENDIX F. No. 9.

Quarterly.

C. O. Sup. Pol. L. P. No. 6 *of* 1842. *See para.* 1273.

Statement of Rewards and other contingencies disbursed under the sanction of the Superintendent of Police, L. P. during the ———— Quarter of the year 184—.

Date of sanction by the Superintendent of Police, L. P.	Month and date of disbursement.	Description of charges.	Amount.	Rewards.

This statement is to be despatched within one month from the close of the previous quarter.
All sums expended during the quarter, although previously sanctioned, are to be entered in the statements.
No sums sanctioned by Government are to be entered; nor sums of expenditure from the surplus Ferry, or Chokedares funds. *C. O. Sup. Pol. L. P. No.* 3 *of* 1848.

APPENDIX F. No. 10.

Annual.

No. 1.—Register of Convicts who have broken jail, or have otherwise effected their escape during the year 184—.

Name and cast of the person who has escaped from jail.	Name of the Father.	Supposed age.	Description of his person.	Supposed usual place of residence.	Amount of reward offered for his apprehension.	Date of apprehension, surrender, or ascertained death.

APPENDIX F. No. 11.

Annual.

No. 3.—Register of persons charged with, or suspected of the commission of specific crimes of a heinous nature who may have eluded the pursuits of justice in the ————, during the year 184—.

Name and cast of the persons accused or suspected.	Name of the Father.	Supposed age.	Description of his person.	Supposed usual place of residence.	Amount of reward offered for his apprehension.	Date of apprehension, surrender or ascertained death.

APPENDIX F. No. 12.

Annual.

C. O. Sup. Pol. L. P. No. 22 *of* 1838.

No 9.—Report of the result of the enquiry as to the sufficiency of the Security given by the Officers of the ——— Court of Zillah ———, made in the month of ——— 184—.

Name and Designation of the Officer required to give security.	Amount of security required.	Names of the Sureties with the date of their engagement.	Names of new Sureties, the old Sureties having been changed.	Remarks.

Certified, that I have revised the Securities of the Officers above-mentioned, and that I consider them good and sufficient.

ZILLAH,
The ——— *of* ——— 184—.

APPENDIX F. No. 13.

Annual.

C. O. N. A. Nos. 155 *and* 176 *of vol.* 2.

Dr...... No. 25.—Annual Cash Account of Ferry Collections of Zillah ———, for 184—. .....*Cr.*

Date.	Items.	Rs.	As.	P.	Rs.	As.	P.	Date.	Items.	Rs.	As.	P.	Rs.	As.	P.

APPENDIX F. No. 14.

Annual.

C. O. N. A. Nos. 155 *and* 176 *of vol.* 2.

No. 26.—Abstract of Receipts and Disbursements on account of the Ferries in the ——— of ——— which have been made public under Regulation VI. 1819, for the year 184—.

1.	2.	3.	4.			5.			6.			7.			8.			9.	10.			11.			12.
Zillah.	Names of Ferries.	Date of Establishment under Regulation VI. 1819.	Balance on the 1st ——— 184—.			Collections up to the ——— 184—.			Total.			Pay of Establishment up to the ——— 184—.			Disbursements on account of repairs of Roads, Bridges, &c.			Authority for Disbursement with date thereof.	Total Expenditure.			Balance in favor of Government.			Remarks.
			Rs.	As.	P.	Rs.	As.	P.	Rs.	As.	P.	Rs.	As.	P.	Rs.	As.	P.		Rs.	As.	P.	Rs.	As.	P.	

APPENDIX F. No. 15.

Annual.

C. O. Sup. Pol. L. P. No. 6 *of* 1848.

Annual Statement of Public Works chargeable to the Ferry Funds completed during the year 184—, and remaining incomplete at the close of the above period.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
Name of District.	List of works remaining incomplete on the 31st Dec. with dates of Government and Superintendent's sanction annexed to them severally.	List of works sanctioned by Government and the Superintendent of Police, L. P. during the year 184—, with sums sanctioned.	List of works in the foregoing columns completed within the year 184—.	Amount disbursed on the works described in the foregoing columns.	Total balance available at the close of the year 184—.	List of works remaining incomplete at the close of the year 184—.	Works to be undertaken in the ensuing year.	Remarks by the Magistrate.	Remarks by the Superintendent of Police, L. P.
					In this column are to be noted all sums in hand; even such as have been appropriated to works which may remain incomplete at the close of the period under review.				

APPENDIX F. No. 16.

Annual.

C. O. N. A. Nos. 155 *and* 176 *of vol.* 2.

No. 28.—Zumeendars, Police, Jail and other Officers, and all other persons rewarded in matters relative to Police in Zillah ————, during the year 184—.

1.	2.	3.	4.	5.	6.	7.
No.	Names of the person and of his Father.	Family Residence.	Office, if a public Officer; if not, his situation in life may be noted.	Nature of reward and amount if pecuniary.	Cause and date.	Remarks.

APPENDIX F. No. 17.

Annual.

C. O. N. A. Nos. 155 *and* 176 *of vol.* 2.

No. 29.—Account Current of the Chokeedaree Collections and Disbursements under Regulation XXII. of 1816, and Act XV. of 1837, in the Town of ————, for the year 184 —, corresponding with ————.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
Annual Collections.					Annual expenditure from Surplus.				
From Europeans.	From Natives.	Total.	Total annual expence of Establishment.	Annual Surplus.	For cleaning the town, &c.	For other purposes.	Total.	Balance in Treasury at the close of the year.	Remarks.

APPENDIX F. No 18.

Annual.

C. O. N. A. Nos. 155 *and* 176 *of vol.* 2.

No. 30.—Detail of Expenditure from the surplus Chokeedaree Collections for the year 18—.

1.	2.	3.	4.	5.
Date.	On what account paid.	Authority for payment.	Amount.	Remarks.

APPENDIX F. No. 19.

Annual.

A return of the covenanted Civil Servants employed in ——— in the Foujdaree Department, for the year 18—.

Name of the Magistrate and date of taking charge.	Name of Joint Magistrate.	Names of Assistants with special powers.	Name of Assistant.	Remarks.

APPENDIX G.

APPENDIX G. No. 1.

C. O. Civil Auditor, March 6th, 1843. *See para.* 1411.

Detailed Statement of Salaries and Establishment of the ————, on the 1st May, 184—.

Department and date of Government order constituting each office and establishment existing on the 1st May, 184—.	Date of the appointment of the individual holding the office.	Name of the individual.	Description of Service.	Amount of salary per month in Co's. Rs.	Total.
J. D., 30th Dec., 1828, ...	1st June, 1829, ..	A. B., ...	Judge or Collector, &c. (as the case may be,)	000 0 0	
J. D., 6th April, 1830, ...	1st July, 1831, ..	C. D., ...	Joint Magistrate and Deputy Collector, ...	000 0 0	
R. D., 17th Feb., 1829, ...	9th Jan., 1834, ..	E. F., ...	Head Assistant to the Magistrate and Collector, ..	000 0 0	000 0 0
		English Office.			
R. D., 1st May, 1793, ...	17th Feb., 1825,	A. B., ...	Head Writer, ...	000 0 0	
Ditto, ...	20th March, 1809,	C. D., ...	2nd ditto, ...	00 0 0	
		E. F., ...	Duftry, ...	0 0 0	000 0 0
		Omlah.			
R. D., 15th September, 1815,	3rd August, 1815,	A. B., ...	Moulvee, ...	000 0 0	
	5th July, 1819, ..	C. D., ...	Serishtadar, ...	000 0 0	
	20th March, 1831,	E. F., ...	Record keeper, ...	00 0 0	
	1st Sept., 1830, ..	G. H., ...	Mohurrir, ...	00 0 0	000 0 0
		Treasury.			
Reg. V. of 1831, G. O. of 1831,	&c. &c., ...	&c. &c., ...	&c., ...	0 0 0	0 0 0
		Sudder Ameen's Establishments.			
Ditto, ...	Ditto ditto, ...	&c. &c., ...	&c., ...	0 0 0	0 0 0
		Tehseeldary.			
Ditto, ...	Ditto ditto, ...	&c. &c., ...	&c., ...	0 0 0	0 0 0

N.B.—The names of individuals on the receipt of more than (10) ten Rupees per mensem, are to be inserted in the present Schedule; and the number, description, and salaries only of such as may be below that sum.

APPENDIX G. No. 2.

C. O. Civil Auditor, March 6, 1843.

See para. 1411.

Statement exhibiting the increase and decrease of the fixed establishment, from 1st May 184— to 1st May 184—.

Number of Incumbents.	Name and description of service.	Salary per month in Co's. Rs.			Date when granted or discontinued.
	Increase.				
1	A. B., English Writer, ...	0	0	0	Authorized by Government on the —
1	C. D., Moulvee, ...	0	0	0	Ditto, Ditto.
4	Chupprassies @	0	0	0	Ditto, Ditto.
	&c. &c.....	0	0	0	Ditto, Ditto.
	Total amount,.....	0	0	0	
	Decrease.				
1	A. B., English Writer, ...	0	0	0	Died on the ——
1	C. D., Moulvee, ...	0	0	0	Discontinued under order.
5	Chupprassies @	0	0	0	Ditto, Ditto.
	&c. &c.....	0	0	0	Ditto, Ditto.
	Total amount,.....	0	0	0	

APPENDIX G. No. 3.

C. O. Civil Auditor, March 6, 1843. *See para.* 1411.

List of uncovenanted servants in the civil branch of the service (commercial excepted), holding more than one office, with the offices held by them, and allowances attached to each, for the 1st May, 184—.

Names.	Description of offices.	Salary per mensem in Co's. Rs.		

APPENDIX G. No. 4.

C. O. Civil Auditor, No. 261, *February* 25, 1845.

See para. 1412.

Annual return exhibiting the names, age, date, and description of appointments and of previous appointments if any, and length of service and amount of allowances of all Uncovenanted Servants in the employ of Government, specifying also the number of years of residence in India of European Servants so employed, pursuant to the orders of Government of India in the Financial Department, under date the 3rd January 1845, and the requisition of the Hon'ble the Court of Directors, dated 6th November, No. 31 of 1844, for the 1st May 184—.

Names.	Age.	Date of Appointment.	Description of Appointment.	Previous Appointment (if any).	Number of years of residence in India.	Length of Service.	Total amount of each person's allowance per mensem.	Remarks.
Europeans.						*Ms. Ds.*		
A. B.,	25	10th July 1844, ..	Deputy Collector at ———,	None,	Two years,	9 21	400 0 0	Including 50 Rs. for Establishment.
C. D.,	50	1st January 1844,..	Deputy Collector at ———,	None,	One year,	13 4	800 0 0	Exclusive of Establishment.
Natives (including Asiatics).								
E. F.,	45	9th November 1842,	P. S. Ameen at ——,	Serishtadar of Zillah Court at ———,	„	10 years,	750 0 0	Including 150 Rs. for do.
G. H.,	70	1st May 1834, ...	S. Ameen at ——,	Moulvee of Provincial Court from May 1825,	„	20 years,	330 0 0	Ditto 80 Rs. for ditto.
J. K. M.,	45	1st July 1835, ...	Deputy Collector at ———,	Writer in the Export Warehouse May 1827,	„	18 years,	500 0 0	Ditto 50 Rs. for ditto.
N. O.,	55	1st May 1836, ...	Moonsiff at ———,	Serishtadar of Zillah Court at ——— from April 1832; Mohurrir at ditto from June 1822,	„	25 years,	190 0 0	Ditto 40 Rs. for ditto.
P. Q.,	23	1st May 1843, ...	Deputy Magistrate,	Deputy Collector, ..	„	2 years,	430 0 0	Exclusive of Establishment.

APPENDIX G. No. 5.

C. O. Sup. Pol. L. P. No. 12 *of* 1844. *See para.* 1414.

Office to which the proposition refers.	Nature of charge.	Proposition.						Casual or Extraordinary.	Grounds of proposition.
		Permanent.		Temporary.					
		Increase per month.	Decrease per month.	Increase per month.		Decrease per month.			
		Rupees.	Rupees.	Period.	Rupees.	Period.	Rupees.		

APPENDIX G. No. 6.

See paras. 1418 and 1437.

Contingent Bill of the Foujdaree Adawlut of Zillah ——— ———, for the month of——— 184—.

Date of authority.	No. of Vouchers.					
		Miscellaneous Contingencies.				
	1	Country stationery, fixed allowance, ...	00	0	0	
	1	Ditto, extra, ...	00	0	0	
Letter of session judge, No. &c.	1	Almirah for use of Office, ...	00	0	0	00 0 0
		Police.				
Letter of Superintendent Police, No. &c.	1	Travelling allowance of Deputy Magistrate, ...	00	0	0	
Ditto, No. &c.	1	Killing dogs, ...	00	0	0	00 0 0
		Prisoners, charges on account of				
	1	Diet allowance, as per statement No. 1, ...	0000	0	0	
Statement of Civil Assistant Surgeon, dated ——.	1	Medical charges for the month of ——, ...	00	0	0	
	1	000 Blankets for prisoners, ...	000	0	0	
	3	Brooms, earthen pots, resin, for the month of ——, ...	0	0	0	
	8	Subsistence allowance to 00 prisoners released, ...	00	0	0	0000 0 0
		Rent.				
	1	Ground-rent of the judge's cutcherry for ——, ...	00	0	0	
	1	Ground-rent of the jail for ——, ...	00	0	0	00 0 0
		Repair of Buildings.				
	3	Repair of thatched sheds, ...	00	0	0	
		Temporary establishment.				
	1	0 Jemadars at 8 rupees per month for ——, ...	00	0	0	
		0 Duffadars at 6 ditto ditto ditto, ...	00	0	0	
		000 Burkundazes at 4 ditto ditto ditto, ...	000	0	0	000 0 0
		Rewards.				
Letter of Superintendent Police, No. &c.	1	To A. B., darogah of Thana ——, for apprehending a gang of dacoits, ...	00	0	0	
Letter of Government, No. &c.	1	To C. D., for apprehending an escaped prisoner, ...	000	0	0	000 0 0
		Jail Manufactures.				
	1	Paid for thread for making cloths, &c. &c., ...	000	0	0	
Total, ...	28	Total Co's. Rs.	....	....		0000 0 0

APPENDIX G. No. 7.

C. O. A. J. D. No. 47, *March* 31, 1830. *See para.* 1420.

Detailed Statement of Cash and Inefficient Balance in the Treasury of the Magistrate of ———, on the ——— 184—, the date on which Mr. ——— made over charge of the Treasury to Mr. ———.

Cash Balance.	Various currencies.	Amount in the currency in which the Treasury accounts are prepared.	
Government Promissory Notes, ... Bank Post Bills, ... Bank of Bengal Notes, ... Gold Mohurs *(distinguishing the different sorts)*, Silver current Rs., ... Ditto ditto, short weight, ... Balashahee Rs., ... Nagpoor Rs., ... Narayunee Rs., ... Bhopal Rs., ... Copper Pice, ... Kowries ..... Kahuns,			*Note.*—The Details are to be given according to the kinds of currency of which the Treasury may be composed.

APPENDIX G. No. 8.

C. O. A. J. D. No. 47, *March* 31, 1830; *No.* 68, *March* 31, 1837; *and No.* 638, *April* 23, 1842. *See paras.* 1420 *and* 1447.

Detailed particulars of the Inefficient Balance of the Office of the Magistrate of ———, ending ——— 184—.

Number of items.	Date of Disbursement.	Name of Disbursing Officer.	Particulars of Balance.	Amount.	Explanation.

This account is to be drawn out on "Book" paper. The details are to be arranged on the principle of exhibiting the outstanding balances of each past year, with reference to each month of the year separately. This mode facilitates adjustment by enabling the Accountant to issue suitable instructions with promptitude.

APPENDIX G. No. 9.

C. O. A. J. D. No. 77, *November* 8, 1842. *See para.* 1424.

Register of receipts in the month of ———— 184—, of deposits.

Year of receipt.	Number of receipt.	Date of receipt.	From whom received.	On what account.	Amount received.	Signature of the native Treasurer.	Signature of the Magistrate.

APPENDIX G. No. 10.

C. O. A. J. D. No. 77, *November* 8, 1842. *See para.* 1424.

Register of repayments in the month of ————, of Deposits of ————.

No. of Deposits as per Register of receipts or particulars of balance.	Year of receipts.	Date of receipts.	Balance of deposits.		Date of payment.	To whom repaid.	Detail of sums charged against each No. of deposits.		Total amount repaid against each No. of deposits.		Signature of the Native Treasurer.	Signature of the Judicial Officer to the repayment.

APPENDIX G. No. 11.

C. O. A. J. D. No. 54, *August* 18, 1832; *No.* 67, *December* 24, 1836; *and No.* 70, *December* 28, 1837. *See para.* 1426.

General Register of unclaimed Judicial Deposits of 20 years' standing or upwards, transferred to Profit and Loss in the Accounts of the Foujdaree Court of ———, and of subsequent refunds under the orders of Government.

Deposits transferred to Profit and Loss 184—.				Refunds.						
Date and year of Deposit.	No.	Nature of Deposit and by whom made.	Amount.	Date of application for refunds and by whom made.	Amount of refund applied for.	When authorized by Government.	When authority communicated by Accountant.	Amount refunded.	In what account charged.	Remarks.
		The following items of unclaimed Deposits aggregating Rs. 000 have been transferred to the credit of Government under the head of Profit and Loss in the Cash account of this Court, for the month of —— agreeably to the Judicial Accountant's circular, dated the ——.								
	00	A. B.	000 0 0							
	„	C. D.	000 0 0							
		Total Rs.	000 0 0							

N. B.—All subsequent transfers and refunds thereupon to be recorded in the detail in the manner above shown.

APPENDIX G. No. 12.

C. O. Civil Auditor, May 1, 1845, *No.* 1. *See para.* 1428.

Statement of charges on account of rations of the prisoners in the Jail at ———, for the month of ———, 184—.

Number of prisoners.	Description of food.	Quantity allowable.	Quantity distributed.	Price.	Amount.
00000 Working prisoners.	Rice, ...	at 14 and 13 chittacks and 11 on Sunday, ..	000 0 0	at — per maund, ..	000 0 0
	Flour, ...	at ½ a seer, ...	00 0 0	at — ditto, ...	00 0 0
	Dall, ...	at 5 and 2 chittacks, ...	000 0 0	at — ditto, ...	000 0 0
	Vegetables, ...	at 2 and 1 chittacks, ...	00 0 0	at — annas ditto, ..	00 0 0
	Fish, ...	at 4 chittacks alternately,	00 0 0	at — ditto, ...	000 0 0
	Oil, ...	at ¼ a chittack, ...	00 0 0	at — ditto, ...	000 0 0
	Salt, ...	at ⅛ a chittack, ...	00 0 0	at — ditto, ...	000 0 0
	Mussalah, ...	at ⅛ a chittack, ...	00 0 0	at — ditto, ...	00 0 0
	Tobacco, ...	at ¼ chittack, ...	00 0 0	at — ditto, ...	00 0 0
	Firewood, ...	at 1½ seer, ...	000 0 0	at — ditto, ...	000 0 0
	Plantain leaves,	at 2 for each prisoner, ..	.. .. ..	at ¼ pie per leaf, ...	00 0 0
	Earthen pots, ..	.....	.. .. ..	at ¼ pie per each prisoner, ...	00 0 0
	Washing and shaving, ..	.....	.. .. ..	at ditto ditto, ...	00 0 0
				Total, ...	0000 0 0
		0000 Non-laboring prisoners at one anna each per diem, ...			000 0 0
				Total, ...	0000 0 0

APPENDIX G. No. 13.

C. O. Civil Auditor, May 1, 1845. *See para.* 1428.

Monthly return of prisoners of every description including the strength of the guard attending them on the roads, &c. for ———— 184—.

Days of the month.	Non-laboring prisoners.	Working prisoners including the sick in Hospital.	Total.	Addenda. Establishment on the roads. For every 50 Burkundauzes one Jemadar.	For every 25 Burkundauzes one Duffadar.	For every 5 prisoners one Burkundauze.
1						
2						
3						
4						
5						
&c.						
Total, ...						

APPENDIX G. No. 14.

C. O. A. J. D. No. 36, *May* 11, 1848. *See para.* 1429.

Dr. .. { No. 1.—Statement showing the amount of Disbursements made on account of Manufactures worked by convicts confined in the Jail, and the Estimated value of the Articles produced at ————, from May 1847 to April 1848. } .. *Cr.*

Estimated Value of Articles produced in 1847-48.

00 reams of paper of large size, at —— per ream,	00 0 0		
Ditto of ditto of small size, at —— per ditto, ..	00 0 0		
		00 0 0	
00 pieces of cloth of fine texture, at —— per piece, ...	00 0 0		
Ditto of ditto of coarse texture, at —— per do.,	00 0 0		
		00 0 0	
00 bricks of large size, at —— per 1000, ...	00 0 0		
Ditto of small size, at —— per 1000, ...	00 0 0		
		00 0 0	
00 baskets of large size, at —— per 100, ...	00 0 0		
Ditto of small size, at —— per 100, ...	00 0 0		
		00 0 0	
			000 0 0

Balance of Unwrought Materials in Store on the 30th April 1848, viz.

00 maunds 0 seers 0 chittacks of cotton, at —— per maund, ..	00 0 0	
000 unburnt bricks, at —— per 1000, ...	00 0 0	
00 bundles of rattan, at —— per bundle,..	00 0 0	
		00 0 0
Co's. Rs., ...		000 0 0

Balance of Unwrought Materials in Store on the 30th April 1847, brought forward, viz.

0 maunds 00 seers 0 chittacks of thread, at —— per maund, ..		00 0 0	
000 bamboos for baskets, at —— per 100, ...		00 0 0	
0 maunds 0 seers of rags for making paper, at —— per maund, ..		00 0 0	
			000 0 0

Materials purchased and used in 1847-48.

Expenditure on account of making cloth as per contingent bills, from —— to ——, transferred in the cash accounts from —— to ——, ...		00 0 0	
Ditto ditto of making paper as per ditto, from —— to ——, transferred in the ditto from —— to ——, ...		00 0 0	
Ditto ditto of making bricks as per ditto, from —— to ——, transferred in the ditto from —— to ——, ...		00 0 0	
Ditto ditto of making morahs as per ditto, from —— to ——, transferred in the ditto from —— to ——, ...		00 0 0	
Note.—When any portion of the expenditure shall not have been audited by the Civil Auditor, but held in Inefficient Balance, the amount should be shown in this statement in the following manner, viz.			
Expenditure on account of making baskets as per contingent bills, from —— to ——, transferred in the cash accounts from —— to ——, ...		00 0 0	
In Inefficient Balance on the 30th April 1848, ..	00 0 0		
		00 0 0	
			000 0 0
Co's. Rs., ...			000 0 0

APPENDIX G. No. 15.

C. O. A. J. D. No. 36, *May* 11, 1848. *See para.* 1429.

Dr. .... { No. 2.—Statement of Articles produced by convicts confined in the Jail at ———, and the value realized by sale thereof, from May 1847 to April 1848. } .... *Cr.*

SALE PROCEEDS OF ARTICLES MANUFACTURED DURING THE LAST AND PREVIOUS YEARS.

Value of 00 reams of large size paper, sold at —— per ream, and credited in the cash accounts from —— to ——, ...	00 0 0		
Ditto of ditto of small size, ditto at —— per ditto, and credited in the cash accounts from —— to ——,	00 0 0	00 0 0	
Ditto of 00 pieces of cloth of fine texture, sold at —— per piece, and credited in the cash accounts from —— to ——, ...		00 0 0	00 0 0

SALE PROCEEDS OF MANUFACTURES OF 1847-48.

Value of 000 bricks of large size, sold at —— per 1000, and credited in the cash accounts from —— to ——, ...		00 0 0	
Ditto of ditto of small size, sold at —— per 1000, and credited in the cash accounts from —— to ——,	00 0 0	00 0 0	
Ditto of baskets of large size, sold at —— per 100 baskets, and credited in the cash accounts from —— to ——, ...		00 0 0	
Ditto of morahs of large size, sold at —— per 100, and credited in the cash accounts from —— to ——, ...		00 0 0	00 0 0
BALANCE OF MANUFACTURES REMAINING UNSOLD ON THE 30TH APRIL, 1848. (Enter details), ...			00 0 0
Co's. Rs.			000 0 0

BALANCE OF MANUFACTURES REMAINING UNSOLD ON THE 30TH APRIL, 1847, BROUGHT FORWARD, VIZ.

00 piece of cloth of fine texture, at —— per piece, ...		00 0 0	
00 bricks, at —— per 1000, ...		00 0 0	
00 reams of paper of large size, at —— per ream, ...		00 0 0	000 0 0

ARTICLES PRODUCED IN 1847-48.

00 reams of paper of large size, as per statement No. 1, ...	00 0 0		
00 reams of ditto of small size, as per statement No. 1, ...	00 0 0	00 0 0	
00 pieces of cloth of fine texture, as per statement No. 1, ...	00 0 0		
Ditto of ditto of coarse ditto, as per statement No. 1, ...	00 0 0	00 0 0	
00 bricks of large size, as per statement No. 1, ...	00 0 0		
Ditto of small size, as per statement No. 1, ...	00 0 0	00 0 0	
00 baskets of large size, as per statement No. 1, ..	00 0 0		
Ditto of small size, as per statement No. 1, ...	00 0 0	00 0 0	00 0 0
Co's. Rs.			00 0 0

APPENDIX G. No. 16.

C. O. Government Bengal, No. 1172, *June* 25, 1845. *See para.* 1430.

Statement showing the Receipts and Disbursements on account of jail manufactures in the district of ———, for the year 184—.

	Receipts.					Charges.				
	Value of cloths sold.	Value of bricks sold.	Total.	Value of articles in store.	Grand total.	Value of materials for making cloths.	Value of materials for making bricks.	Total charges.	Excess of receipts.	Excess of charges.

APPENDIX G. No. 17.

C. O. A. J. D. No. 57, February 16, 1833. See para. 1432.

Daily Register of the value of Stamps as per Schedule B., Regulation X. of 1829, used in Judicial Proceedings of the Court of ————, of Zillah ————, for the month of ————.

Dates.	1. Bail-bonds, Moochulkas, &c.	2. Copies of Decrees.	3. Copies of Judicial proceedings, &c.	4. Copies of the proceedings of the Sudder Dewany Adawlut.	5. Petition accompanying exhibits.	6. Mokhtarnamahs, Wakalutnamahs required to be filed for the conduct of suits.	7. Petitions, Durkhasts, &c.	8. Petition of plaint.	9. Judicial proceedings.	10. Razeenamahs, &c.	11. Applications for witnesses, &c.	Total.	12. Deduct stamps ordered to be refunded on Razeenamahs.	Net Total.	Remarks.
1st	0 0	0 0	0 0	0 0	1 0	1 0	0 8	16 0	1 0	1 0	1 0	21 8	1 0	20 8	
2nd	0 0	1 0	0 8	0 0	1 0	2 0	1 0	32 0	2 0	2 0	4 0	45 8	2 0	43 8	
3rd	0 8	5 0	2 0	0 0	5 0	3 0	1 0	250 0	2 0	2 0	10 0	280 8	2 0	278 8	
4th															
5th															
&c.															
Total, ...	0 8	6 0	2 8	0 0	7 0	6 0	2 8	298 0	5 0	5 0	15 0	347 8	5 0	342 8	
		Stamp to be credited by the court granting the copy only.	*As in the preceding column.*	*As in the preceding column.*	*The stamp on the petition accompanying the exhibit or proceeding only to be credited; not that on the proceeding itself exhibited.*					*The amount stamp ordered to be refunded must be entered as a debit against the Judicial Department and deducted from the stamps used as per col. 12.*	*To be entered as in petition for exhibit.*			*The total exhibited in this column to be entered in the abstract statement.*	

APPENDIX G. No. 18.

C. O. A. J. D. No. 55, July 26, 1832. See paras. 1434 and 1441.

Dr. .... Cash Account of the Magistrate of Zillah ——————, for the month of —— —— 184—. .... *Cr.*

To Balance of Cash on the ——.				By Collector of ——.		
Brought forward from last Account.				Remitted to his Treasury as per his receipt, ...		000 0 0
Cash in Court, ...	000 0 0			By Foujdaree Deposits.		
Inefficient Balance, ...	000 0 0			Amount repaid to individuals in this month, as per statement No. ——, ...		000 0 0
		000 0 0		By Profit and Loss.		
To Collector of —— .						000 0 0
Received from him on the following dates:				By Ferry Fund.		
On the —— per my receipt of —,	000 0 0					000 0 0
On the —— ditto ditto ditto, ..	000 0 0			By Chokeedaree.		
		000 0 0		Paid Salary of the Sudder Bukshee with Mohurrir, for —— ,..	00 0 0	
To Foujdaree Deposits.				Ditto ditto of Chokeedars, at —— per month, for ——, ...	00 0 0	
Received from individuals in this month, as per annexed statement No. ——, ...		000 0 0		Ditto ditto of ditto at —— ditto, for ——, ...	00 0 0	
To Profit and Loss.						000 0 0
		000 0 0		By Judicial Charges General.		
To Ferry Fund.				Fines, Forfeitures and Escheats,	000 0 0	
Amount Collected from public Ferries in this month, ...		000 0 0		Fines refunded to ——, per Magistrate's order of the ——, ...	000 0 0	
To Chokeedaree Fund.				Sale of unclaimed property refunded to ,.....	000 0 0	
Amount Collected in this month, ...		000 0 0				000 0 0
To Judicial Charges.				By Balance.		
Fines, Forfeitures, and Escheats,	000 0 0			Cash in Court on the —— , ...	000 0 0	
Amount of Fines received in this month, ...	000 0 0			Inefficient Balance,..... ...	000 0 0	
Ditto of sale of unclaimed property, ...	000 0 0			Advance for Contingencies.		
Refunds and recredits account Judicial Charges General.				For ——, ...	00 0 0	
Amount of ——	00 0 0			For ——, ...	00 0 0	
Ditto of ——	00 0 0					000 0 0
Ditto of ——	00 0 0					
Ditto of ——	00 0 0					
Ditto of ——	00 0 0					
		000 0 0				
		000 0 0				000 0 0

ZILLAH ——————

The ——————

FOUJDAREE ADAWLUT,

—————— 184—.

APPENDIX G. No. 18.—*Continued.*

Memorandum of Foujdaree Deposits.

Balance on the——,	000	0	0			
Add,						
Amount received in this month,	000	0	0			
	000	0	0			
Deduct,						
Amount discharged as debited herein,	000	0	0			
Balance on the ——,	..		..	000	0	0
				000	0	0

Memorandum of Ferry Fund.

Balance on the ——,	000	0	0			
Add,						
Amount received in this month,	000	0	0			
	000	0	0			
Deduct,						
Amount disbursed as debited herein,	000	0	0			
Balance on the ——,	..		..	000	0	0
				000	0	0

Memorandum of Chokeedaree Collections.

Balance on the ——,	000	0	0			
Add,						
Amount collected in this month,	000	0	0			
	000	0	0			
Deduct,						
Amount disbursed as debited herein,	000	0	0			
Balance on the ——,	..		..	000	0	0
				000	0	0

Statement of the aggregate amount or Value of Stamps filed in the Magistrate's Court of ———, for —— 184—.

Value of Stamps filed in the Magistrate's Court,	000	0	0
Ditto ditto in the Joint Magistrate's ditto,	000	0	0
Ditto ditto in the Assistant ditto,	00	0	0
Ditto ditto in the Deputy Magistrate's ditto,	00	0	0
Ditto ditto in the 1st P. S. Ameen's ditto,	00	0	0
Ditto ditto in the 2nd P. S. Ameen's ditto,	00	0	0
Ditto ditto in the Law Officer's ditto,	00	0	0
Total Co's. Rs.	000	0	0

APPENDIX G. No. 19.

C. O. A. J. D. No. 55, *July* 26, 1832. *See para.* 1435.

Abstract of the Court of Zillah ————, for the month of ————, 184—.

Date of appointment.		Salary in Co's. Rs.
	———— Deputy Magistrate. ———— Civil Asst. Surgeon. ———— Sub. ditto ditto.	
	ESTABLISHMENT.	
	1 Clerk, ... Foujdaree Serishta, including Jail Establishment, ... Burkundauz Gaurd, ...	
	POLICE.	
	Cutwallee Thana, ... 00 Thanas, ... 00 Guard Boats, ... 00 Pharees, ... Balagushtee Guard, ... 1 Native Vaccinator, as per accompanying bill, ... &c. &c., ...	
	Total Co's. Rs., ...	

APPENDIX G. No. 20.

C. O. A. J. D. No. 55, *July* 26, 1832. *See para.* 1444.

Register of allowances to Chokeedars in the Zillah of ————, for the month of ————.

Month for which payment is made.	Number of Chokeedars and rates of allowance per month.	Amount of monthly charges.	Signature of the Magistrate and Native Treasurer.
	Chokeedars @ ———— Rs. per month, ... Duffadar @ ———— Rs. per month, ... Sudder Bukshee @ ———— Rs. per month, Rs.		

APPENDIX G. No. 21.

FORM A.

C. O. A. J. D. No. 58, *January* 20, 1834. *See para.* 1455.

Register of Deposits made by the Establishment of the Collectorship of ——————, (or other Office as the case may be) for investment in the Government Savings' Bank in the month of —— ——— 18—, agreeably to the credits afforded to the Treasury account of the same month.

Date and year of Receipt of Deposit.	Number of Deposits.	Name of Depositor.	Religion or caste.	Present occupation or employment.	Resident.	Amount of Deposit.			Signature of Officer in charge of the Treasury, acknowledging the receipt of the Deposit.	Remarks.

APPENDIX G. No. 22.

FORM B.

C. O. A. J. D. No. 58, *January* 20, 1834. *See para.* 1455.

Form of application for payment of Principal and Interest of Deposit.

I, A. B., holding the situation of ——— on the Establishment of ———, resident of ——— *(religion or native caste to be stated)*, being desirous of withdrawing the sum of Rupees ——— from the Government Savings' Bank, a part [or the whole] of my Deposit *(as the case may be)*, accordingly submit this my application for the same, and request payment thereof.

APPENDIX G. No. 23.

FORM C.

C. O. A. J. D. No. 58, *January* 20, 1834. *See para.* 1455.

Register of Payments made to the Establishment of the Collectorship of ———, (or other Office as the case may be) in repayment of Deposits heretofore invested in the Government Savings' Bank, agreeably to the orders of the Secretary to that institution.

Date and year of repayment.	Number of order of payment.	Name of Payee.	Religion or caste of Payee.	Occupation or employment of Payee.	Residence of Payee.	Amount of payment.	Signature of Payee acknowledging payment.	Counter-signature of Collector to the payment.	Number of Collector's vouchers.	Remarks.

APPENDIX G. No. 24.

C. O. Acc. Gen. No. 95, *December* 31, 1845. *See para.* 1456.

(No. 8.—Form of the Account for subsistence of Seamen, subjects of Great Britain, by the Governors, Ministers, and Consuls : viz.)

An account of such Seamen, subjects of Great Britain, as were subsisted by ———, at ———, the respective times under-mentioned, at the rate of ——— per day, pursuant to an Act of Parliament passed in the eleventh year of His late Majesty King George the Fourth, Cap. 20, Section 82, entitled "an Act to amend and consolidate the Laws relating to the Pay of the Royal Navy.

Seaman's Name.	Between what times subsisted.		No. of Days.	From what cause distressed.	Name of the ship he belonged to.	Owner's name and port belonging to.	Date per diem in currency.	Amount currency.	Seaman's name or mark in acknowledgement of payment or of having been boarded.	In what manner such men or boys were disposed of.	Amount of wages received : if none received the cause to be briefly stated against each man's name.
	From	To									

N. B.—The foregoing account is to be attested by the hands of the respective Governors, Ministers, or Consuls, and certified to by two or more merchants in the manner following : viz.

Attested by me

We, whose names are hereunto subscribed, being merchants residing in the part of ———, do hereby certify that the rate of ——— a day charged for the subsistence of the above men, is not more than a sufficiency of the necessaries of life for one day could be procured for at the time.

Witness our Hands this ——— day of ——— 184—.

(Signed)

WEST BENGAL SECRETARIAT LIBRARY

INDEX

TO

REGULATIONS AND ACTS OF GOVERNMENT QUOTED IN THE TEXT.

Note.—The letter *n* after the number of the paragraph means foot-note ; *m n* marginal note. The word *omitted* signifies that the quotation is not inserted in the text, but will be found in the "Errata."

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	VIII.	66	—	1892
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		3	—	146, 475
		4	—	477
		5	—	258, 260, 262, 643, 1157, 1160
		6	—	257, 448, 454
		7	—	1139
		8	—	505
		9	—	506
		10	—	267
		11	—	675
		12	—	321
		14	—	667
		18	—	665
		21	—	2048
		23	—	230
		25	—	2284
		26	—	337
		34	—	727
		37	1	1969
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		49	—	316, 834
		50	—	855
		51	—	857
		53	—	862
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		70	—	979
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		72	—	986
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		74	—	59, 987
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	XIII.	2	—	1939, 1965
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		9	1	1989
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		—	7	1995
		—	8	1996
		—	12	1997
		10	—	583
		11	—	3221
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		20	—	1204
		21	—	1195*n*.
		28	—	1893
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		6	—	1356
		7	—	1357
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		4	—	1480
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		—	3	1837
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		—	5	1839
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		27	—	1483
		29	—	1484
		30	—	1485
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	XXXVI.	12	—	3321
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		—	9	1842
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		4	1	147
		—	2	1140
	XVII.	1	—	1843*n*.
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		3	—	1843
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		3	—	2896
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		6	—	2899
		7	—	2900
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		9	—	2902
		10	—	2903
		13	—	2892
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		—	2	3346
		—	3	3348
		3	—	3350
		4	—	542*n*.
	IV.	5	—	503
		6	—	576
	IX.	2	—	320
		3	—	322
		4	—	323
		5	—	320, 322, 323
	X.	2	—	1326
		3	—	739, 1335, 986½ *omitted*.
		4	—	1336
	XI.	2	1	1222, 1225
		—	2	1226
		—	3	1227
		—	4	1231
		—	5	1229
		3	—	1230
		4	1	1234
		—	2	1235
		—	3	1236
		5	—	1238
		6	—	1240
1797.	II.	2	—	1846
		3	1	1847
		—	2	1849
		—	3	1851
	IV.	3	—	2868
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		6	—	2888
		7	2	373, 377, 958
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		—	4	381
1797.	IV.	7	5	382
		—	6	383
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		10	—	1042
		11	—	2231
		12	—	736
		13	—	949
		14	—	950
	VIII.	2	—	1845
	XIII.	2	—	563, 577
		3	—	565
		4	—	566
	XIV.	3	1	913, 1066
		4	—	914
		5	—	917
		8	—	1067
1799.	I.	6	—	2141
	VII.	9	—	1202
		10	—	1195*n*.
		12	—	1201
		15	8	1895
	VIII.	2	—	2881
		3	—	2882
		4	—	2886
		5	—	2873
	X.	1	—	953
		2	—	954, 958
1800.	V.	9	—	1202
		10	—	1195*n*.
		12	—	1201
		14	8	1895
1801.	I.	8	—	3272
	II.	11	—	978
		13	—	982, 984, 1005
		14	—	502, 1035
		16	—	985
	III.	2	—	3276
	VIII.	2	—	2874
		3	—	2875
		4	—	2809
		5	—	2810
		6	—	2876
	IX.	4	—	1247
		5	—	1232
1802.	VI.	1	—	2889
		2	—	2889
		3	—	2890
		4	—	2891
1803.	I.	13	—	46
		19	—	47
		20	—	48
		21	—	49
	III.	8	—	3275
	VI.	2	—	475, 476
		3	—	475
		4	—	477
		5	—	258, 260, 262, 1157, 1160
		6	—	257, 448, 454
		7	—	1139, 1140
		8	—	505
		9	—	506
		10	—	267
		12	—	321
		14	—	323, 667
		18	—	665
		19	1	147, 3339
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		—	3	3348
		—	4	3350
		—	5	542*n*.
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		22	—	230

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1803.	VI.	25	—	2284
		26	—	337
		31	—	913, 917
		32	—	320
		33	—	322
	VII.	5	—	727
		8	—	1069
		15	1	459, 772, 799, 860
		—	2	2868
		16	—	325, 710
		17	—	316, 834
		18	1	373, 377, 958
		—	2	380
		—	3	381
		—	4	382
		—	5	383
		—	6	385, 783
		19	—	855
		20	—	857
		21	—	857
		22	—	862
		23	—	59, 871
		25	—	413, 872
		26	—	961
		27	—	948
		29	—	1972
		30	—	501, 734
		33	—	735
		34	—	2888
		35	—	2231
		36	—	949
		37	—	736
		38	—	950
		39	1	913, 1066
		—	2	914
		—	3	1067
		41	—	954, 958
	VIII.	2	—	986
		4	—	978
		5	—	982, 984, 1005
		6	—	984
		7	—	979
		8	—	1969
		9	—	59, 987
		10	1	2873
		—	2	2874
		—	3	2875
		—	4	2809
		—	5	2810
		—	6	2876
		11	—	62, 2872
		12	—	988
		13	—	997
		14	—	1015
		15	—	2881
		16	—	2882
		17	—	2886
		18	—	1042
		23	—	2141
		24	—	502, 1035
		25	1	306, 356
		—	2	307
		—	3	318
		—	4	312
		—	5	707
	IX.	2	—	64
	XI.	4	—	1968
		6	—	1969
		8	1	1998
	XII.	2	—	1939, 1965
		4	—	1940
		11	—	1942
1803.	XII.	12	1	1989
		—	2	1991
		—	4	1992
		—	5	1993
		—	6	1994
		—	7	1995
		—	8	1996
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		13	—	583
		14	—	3221
		15	—	503
		16	—	576
		17	—	563, 577
		18	—	565
	XIII.	4	—	1354
		5	—	1355
		6	—	1356
		7	—	1357
	XVII.	12	—	3321
	XIX.	2	—	1975, 3437
	XXII.	2	—	1326
		3	—	1335, 986½ *omitted.*
		4	—	1336
	XXVIII.	17	2	1202
		19	1	1195*n.*
		—	2	1195*n.*
		26	—	1893
		32	8	1895
	XXXI.	13	—	3320
	XXXV.	2	—	1841
		3	1	1843
		—	2	1846
		—	3	1847
		—	4	1849
		—	5	1851
		10	—	2676
		16	—	152
		21	—	1566, 3210
		24	—	1533
	XXXVI.	13	—	3320
	XLV.	14	—	2475
		51	1	2476
	L.	1	—	356
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		—	2	307
		—	3	318
		—	4	312
		4	—	707
	LIII.	1	—	43
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		—	2	883
		—	3	884
		—	4	885
		—	5	886
		—	6	416, 887
		—	7	71, 888
		3	1	3033
		—	2	94, 3045
		4	1	132, 3050
		—	2	132, 3052
		—	4	3057
		—	5	3055
		—	6	3063
		5	1	3123
		6	1	865
		—	2	866
		—	3	972
		7	1	993
		—	2	994
		—	3	63, 995
		—	4	996
		8	2	1045

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		—	5	2263
		9	1	2132
		—	2	2136
		11	2	2668
		—	3	2669
1804.	III.	2	1	1222, 1225
		—	2	1226
		—	3	1227
		—	4	1231
		—	5	1232
		—	6	1229
		3	—	1230
		4	1	1234
		—	2	1235
		—	3	1236
		—	4	1238
		—	5	1240
		5	—	1247
		7	—	1140
		11	—	2892
	IV.	1	—	36
	V.	5	—	1903
		6	—	1904
		12	—	1965
		14	—	1918
		21	—	1907
		23	—	1945
		24	—	1949
	IX.	3	—	34
		7	—	476
	X.	2	—	2696
		3	—	2697
		4	—	2698
1805.	III.	2	—	3053
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		4	—	3060
		5	—	3062
		6	—	3125
	VIII.	4	—	34
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		—	6	209
		—	8	1852
		31	—	53
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	XVIII.	5	—	1479*n*.
		6	—	1479*n*.
1806.	VI.	12	6	2466
		—	7	2466
		13	—	2467
	X.	10	—	1990
	XI.	2	—	1819
		3	1	1820
		—	2	1823
		6	—	1824
		7	—	1825
		8	—	1826
		9	2	1810
		—	3	1811
		—	4	1812
		—	5	1813
		—	6	1814
		—	7	1833
		10	2	208, 2142
		—	3	209
		12	1	53
		—	2	53
		14	1	528
		—	2	529
		—	3	531
		15	1	532
1806.	XI.	15	2	533
		16	—	534
		17	—	535
		18	—	532, 534
	XII.	1	—	35
	XV.	2	—	3347
		3	—	3348
		5	—	3349
1807.	I.	4	1	3255
		—	2	3256
	II.	3	1	3303
		—	2	3305
		—	3	3306
		4	3	3313
		5	—	3290
		6	—	635, 3292
	IX.	3	1	231, 1101
		—	2	231, 1101
		—	3	232, 1102, 2792
		—	4	232, 1103, 1159
		—	5	232, 1103, 2792
		4	—	233, 235, 708
		5	—	238
		6	1	239, 1091
		—	2	239, 711, 1092
		—	3	239, 1093
		—	4	239
		7	—	240, 1094
		8	—	240, 1055, 1096
		9	1	1142, 2877
		—	2	1143
		10	—	1158
		14	2	1072
		—	3	1073
		19	—	71, 507, 917
		20	—	507, 578
		22	—	1315
		24	—	998
	XII.	21	—	1630
	XIV.	4	—	1487, 1841
		5	1	1489
		—	2	1490
		6	1	1491
		—	2	1492
		—	3	1493
		—	4	1494
		7	1	1495
		—	2	1496
		11	2	1497
		—	3	1498
		—	4	1499
		—	5	1500
		—	6	1501
		17	—	1502
		18	—	1503
		19	1	1843
		—	2	1844
		—	3	1845
		20	—	1853
		21	—	1853
1808.	IV.	9	—	489
		10	—	489
	VIII.	3	—	3054
		4	—	3054
		6	—	1018
		7	—	989
		9	—	3059
	X.	1	—	1459*n*.
		5	—	1463
		6	—	1461
		7	—	1474
		8	—	1476

Year.	No.	Sec.	Cl.	
1808.	X.	9	—	1478
1809.	III.	2	1	195
		—	3	203
		3	1	211
		—	2	212
	IV.	4	—	193
		5	—	193
	V.	2	1	165
		—	2	169
		3	—	170
		4	—	171
	VIII.	3	—	1902
		5	1	1908
		—	2	1909
		—	3	1912
		—	4	1913
		—	5	1547, 1548, 1916, 1920, 1936
		7	1	1908
		—	2	1909, 1912, 1913, 1916, 1920, 1936
		9	—	1918, 1936
		10	5	3272
		11	2	1907
		12	—	1946
		13	—	1933
1810.	I.	2	—	819
		3	—	820
		4	—	821
	VI.	2	—	1854
		3	—	1855
		4	—	1866
		5	—	1868
	VIII.	4	—	1459
		5	—	1460
		6	—	1475
	IX.	31	—	2610
		38	—	3223
		39	—	3224
	XIV.	3	—	1013
		4	—	1003
		6	—	1016
		7	—	951, 1145
	XVI.	2	—	475
		3	—	154
		4	—	547
		5	—	548
		6	—	475, 549
		7	—	550
		8	—	551
		9	—	552
		10	—	553
		11	—	554
		18	—	1274
	XIX.	2	—	2393
		3	—	2394
		4	—	2395
		5	—	2396
		6	—	2397
		7	—	2398
		8	—	2400
		9	—	2401
		10	—	2404
		11	—	2406
		12	—	2407
		13	—	2408
		14	—	2409
		15	—	2410
		16	—	2411
	XX.	2	—	197
		4	—	198
		5	—	193
		6	—	193
		7	—	193

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1810.	XX.	8	—	193, 199
		9	—	193
		10	—	193
		12	—	199
		15	—	200
		16	—	201
		17	—	202
		18	—	203
		19	—	213
		21	—	196, 204
		26	—	193
1811.	I.	3	1	3151*n*.
		—	2	3151*n*.
		—	3	3151*n*.
		—	4	3152
		4	—	3152
		6	—	3146
		10	—	1856
		11	2	1164
		—	3	1165
		—	4	1166
		—	8	1184
		—	9	1185
		—	10	1186
		—	11	1188
		—	13	1172
	VII.	3	—	241
		4	—	1072, 1073
		5	—	268
		6	—	242
	X.	2	—	2988
		3	—	2989
		4	—	2990
	XII.	2	2	977
	XIV.	2	3	2183
		—	4	2184
1812.	III.	2	1	341
		—	2	343
		—	3	344, 709
		—	4	345
		—	5	346
		—	6	236, 246
		3	—	234
		4	2	1857
		5	1	1464
		—	2	1465
		—	3	1466
		6	—	1640*n*.
		9	1	1255, 1870, 2114
		—	2	1255, 1870, 2114
		—	3	1871
		—	4	1872
		—	5	1873
		—	6	1875
		—	7	1876
		—	8	1877
		10	1	1878
		—	2	1879
		11	1	1880
		—	2	1881
		12	—	1882
		13	—	1883
	XI.	1	—	2683*n*.
		2	—	2683
		3	—	2684
		4	—	2685
		5	1	2686
		—	2	2687
	XV.	2	—	1856
1813.	II.	2	—	2009
		3	—	2010
		4	—	2011

Year.	No.	Sec.	Cl.	
1813.	VII.	3	—	3276
	VIII.	—	—	173
	IX.	2	2	2264
		—	3	2275
	X.	24	2	2549
		—	4	2548
		32	—	2555
1814.	VIII.	2	—	1858
	XI.	2	2	3151*n*.
		—	3	3151*n*.
		—	4	3151*n*.
		—	5	3151*n*.
	XV.	2	1	891
		—	2	892
		—	3	894
	XIX.	13	2	3220
	XXI.	2	—	3443
		3	—	3444
	XXIII.	10	2	3218
		67	—	3218
	XXV.	12	4	747
		15	—	1545, 1923
		17	—	1020
	XXVI.	14	2	1074
		—	3	1075
		—	4	1076
		—	5	1077
		—	6	1078
		—	7	1079
		—	8	1080
		—	9	1082
		16	4	400, 1367
	XXVII.	17	—	716
1816.	II.	9	—	489
		10	—	489
	IV.	4	—	2304
	V.	9	—	489
		10	—	489
	XIII.	11	—	2526
		12	—	2536
		13	—	2539
		26	—	1126
		27	—	1127
		29	—	2527
		34	—	2528
		35	—	2529
		36	—	2530
		37	—	2532
		39	—	2540*n*.
		41	—	2540
		42	—	2533, 2534
		44	—	2540*n*.
		76	—	2540*n*.
		77	—	2540*n*.
		78	—	2535
		83	—	2541
		86	—	3272
		88	—	3272
		90	—	2545
		92	—	2557
	XIV.	4	—	2094
		5	1	2095
		—	2	2096
		—	3	2097
		—	4	2098
		—	5	2099
		6	1	2101
		—	2	2102
		—	3	2103
		7	—	2108
		8	—	2113
		9	2	2194
1816.	XIV.	9	3	2195
		10	1	2285
		—	2	2287
		15	—	2275
	XVII.	2	1	1527
		3	—	1528
		4	—	1624
		5	—	1529, 1625
		7	1	1530
		—	2	2186
		—	3	1532, 2188
		—	4	2189
		—	5	2190
		—	6	2191
		—	7	2192
		—	8	1545, 1923, 2193
		8	1	1511
		—	2	1512
		—	3	1513
		—	4	1514
		9	1	1542
		—	2	1543
		—	3	1544
		10	—	1472
		11	1	1553
		—	2	1554
		—	3	1555
		12	1	1467
		—	2	1468
		13	—	1477
		14	1	2117
		—	2	2118
		—	3	2121
		15	—	1276
		17	1	2412
		—	2	2413
		—	3	2414
		—	4	2415
		—	5	2416
		18	—	2160, 2417
		19	1	2418
		—	2	2419
	XVIII.	2	—	38
	XXII.	2	—	1580
		3	—	1584
		4	—	1585
		5	—	1588
		6	—	1589
		7	—	1590
		9	—	1591
		10	—	1592
		11	—	1595
		12	1	1596
		13	—	1599
		14	1	1600
		—	2	1601
		15	—	1602
		16	1	1604
		—	2	1605
		—	3	1606
		—	4	1607
		—	5	1608
		—	6	1609
		—	7	1611
		—	8	1612
		17	—	1614
		18	—	1615
		19	—	1616
		20	—	1617
		21	—	1618
		22	—	1619
		23	—	1620

Year.	No.	Sec.	Cl.	
1816.	XXII.	24	—	1626
1817.	II.	2	—	480
	IV.	—	—	37
	VII.	2	1	1586
		—	2	1587
	X.	1	—	37
	XII.	26	—	3272
		27	—	3322
		30	—	3272, 3322
		36	—	3272, 3322
	XIII.	2	—	489
	XVII.	2	—	875
		3	—	991
		4	—	990n.
		5	—	414, 873
		6	1	3008, 3025
		—	2	3026
		—	3	3010
		—	4	3020
		7	—	2809
		8	2	3111
		—	3	3054
		—	4	3112
		—	5	3121
		—	6	3054, 3122
		—	7	3124
		9	1	3303
		—	2	2477, 3303
		—	3	2478, 3304
		10	1	2482, 3323
		—	2	2482, 3323
		—	3	2482
		11	—	2485
		12	2	2233
		—	3	2233
		—	4	2236
		13	1	3257
		—	2	3258
		14	1	3276
		—	2	3277
		—	3	3291
		—	4	3293
		—	5	3296
		—	6	3297
		15	—	2904
		17	—	1019
		18	1	1021
		—	2	1022
	XVIII.	2	1	1940
		—	2	1940
		—	3	1941
		3	—	1940
		6	1	1999
		—	2	2000
		—	3	2003
		7	2	1980
		—	3	1981
		—	4	1986
	XX.	3	2	1536
		—	3	1537
		4	1	1517
		—	2	1518
		—	3	1519
		—	4	1520
		5	1	1521
		—	2	1522
		6	1	1511
		—	2	1512
		—	3	1513
		—	4	1514
		7	1	1568
		—	2	1576

Year.	No.	Sec.	Cl.	
1817.	XX.	7	3	1577
		—	4	1578
		8	1	1647
		—	2	1648
		—	3	1649
		—	4	1650
		—	5	1651
		—	6	1652
		—	7	1653
		—	8	1654
		—	9	1655
		—	10	1656
		—	11	1657
		—	12	1658
		—	13	1659
		—	14	1660
		—	15	1661
		9	1	1662
		—	2	1663
		—	3	1664
		—	4	1665
		—	5	1666
		—	6	1667
		—	7	1668
		—	8	1669
		—	9	1670
		—	10	1671
		—	11	1672
		—	12	1673
		—	13	1674
		—	14	1675
		—	15	1676
		—	16	1677
		—	17	1678
		—	18	1679
		10	1	1684
		—	2	1685
		—	3	1686
		—	4	1687
		—	5	1690
		—	6	1692
		—	7	1693
		—	8	1694
		11	1	1697
		—	2	1699
		—	3	1700
		—	4	721, 1702
		—	5	722, 1703
		—	6	1704
		—	7	279, 1705
		12	1	243, 1711
		—	2	243, 1717
		—	3	1058, 1718
		13	1	1720
		—	2	1731
		—	3	1738
		—	4	1739
		—	5	1740
		—	6	1741
		—	7	1742
		—	8	1743
		—	9	1744
		—	10	1745
		14	1	1861
		—	2	1750
		—	3	1751
		—	4	1752
		—	5	1753
		—	6	1754
		—	7	1755
		—	8	1756
		—	9	1757

Year.	No.	Sec.	Cl.	
1817.	XX.	14	10	1759
		—	11	1760
		—	12	1761
		15	1	1763
		—	2	1765
		—	3	1766
		—	4	1768
		—	5	1769
		—	6	1770
		—	7	1771
		16	2	1168
		—	3	1169
		—	4	1170
		—	5	1171
		—	6	1173
		—	7	1174
		—	8	1175
		—	9	1176
		—	10	1177
		—	11	1179
		—	12	1181
		—	13	1182
		—	14	1183
		—	15	1187
		—	16	1189
		—	17	1278
		17	—	2474
		18	1	2708
		—	2	2709
		—	3	2710
		—	4	2711
		—	5	2712
		19	1	1772
		—	2	354, 1777
		—	3	1778
		—	4	1779
		—	5	1781
		—	6	1782
		—	7	1783
		—	8	1784
		—	9	1785
		—	10	1786
		—	11	1787
		—	12	1788
		—	13	1789
		—	14	1790
		—	15	1791
		—	16	1792
		—	17	1795
		20	1	2629
		—	2	2630
		—	3	2631
		—	4	2633
		—	5	2634
		—	6	2635
		—	7	2636
		—	8	2672
		—	9	2673
		—	10	2674
		—	11	2675
		—	12	2682
		21	1	1629
		—	2	1632
		—	3	1634
		—	4	1635
		—	5	1636
		—	6	1637
		—	7	1638
		—	8	1641
		—	9	1642
		—	10	1643
		22	1	1523

Year.	No.	Sec.	Cl.	
1817.	XX.	22	2	1524
		—	3	1525
		—	4	1526
		23	1	349
		—	2	350, 1161
		—	3	271, 352
		—	4	353
		24	1	250, 1097
		—	2	1098
		—	3	251, 1099, 1134
		—	4	252, 1100
		—	5	1084
		—	6	1085
		25	1	253, 1105
		—	2	1106
		—	3	1107
		—	4	1108
		—	5	1109
		—	6	1110
		—	7	1112
		—	8	254, 1133
		—	9	1135
		—	10	255, 2879
		—	11	256, 2793
		26	1	1221
		—	3	1228
		—	4	1237
		—	5	1233
		—	6	1241
		—	7	1242
		—	8	1243
		—	9	1244
		—	10	1245
		—	11	1223
		—	12	1224
		—	13	1256, 1884
		—	14	1257, 2880
		—	15	1271
		27	2	1194
		—	3	1195
		—	4	1196
		—	5	1197
		—	6	1198, 1894
		—	7	1199
		28	1	2547
		—	2	2548
		—	3	2548, 2549
		—	4	2553
		—	5	2554
		29	1	1115
		—	2	1116
		—	3	1117
		—	4	1118
		—	5	2567
		—	6	2563
		—	7	2569
		—	8	2570
		—	9	2528, 2533, 2534
		—	10	2529
		—	11	2529
		—	12	2530
		30	1	1797
		—	2	1815
		—	3	1816
		—	5	1798
		—	6	1799, 3427
		31	1	1800
		—	2	1801
		—	3	1802
		—	4	1803
		32	1	1804
		—	2	1805

Year.	No.	Sec.	Cl.	
1817.	XX.	33	1	1808
		—	2	1809
		—	3	1470*n*. 1488
		34	—	1486, 1504
1818.	I.	2	—	489
	II.	—	—	39
	III.	1	—	2320*n*.
		2	1	2320
		—	2	2321
		—	3	2322
		3	—	2323
		4	1	2324
		—	2	2326
		5	—	2327
		6	—	2328
		7	—	2329
	VI.	2	1	1317
		—	2	1318
		3	2	691
		—	3	1144
		—	4	713
		4	1	1153
		—	2	1154
	VIII.	2	1	2652
		—	2	2653
		3	—	2658
		4	—	2659
		5	1	2666
		—	2	2667
		6	1	2299
		—	2	2301
		7	—	2664
		8	1	2638
		—	2	2640
		9	1	2643
		—	2	2644
		—	3	2646
		10	1	2647
		—	2	2648
		—	3	2649
		—	4	2650
		—	5	2651
	XI.	2	1	2540*n*.
		—	3	2540*n*.
		—	4	2540*n*.
		3	1	2540*n*.
		—	2	2540*n*.
	XII.	2	1	3132
		—	2	3136
		—	3	3150
		—	4	3144
		—	5	3145
		3	2	3078, 3080, 3110
		—	3	3087
		—	4	3089
		—	5	3094
		4	1	3167
		—	2	3168
		—	3	3171
		—	4	3174
		—	5	3180
		5	1	2122
		—	2	2126
		—	3	2131
		6	1	2129
		—	2	2130
		7	1	1727
		—	2	1728
		—	3	1730
1819.	I.	3	—	489
	II.	19	2	3272
	III.	2	—	2647
1819.	VI.	2	2	2357
		3	1	2359
		—	2	2360
		—	3	2361
		4	1	2362
		—	2	2363
		—	3	2364
		5	—	2366
		6	1	2367
		—	2	2369
		7	1	2370
		—	2	2371
		—	3	2372
		—	4	2373
		8	—	2375
		9	—	2377
		10	—	2378
		11	—	2380
		12	1	2381
		—	2	2382
		13	1	2383
		—	2	2384
		14	—	2385
	VII.	2	—	2979
		3	—	3399
		4	—	3400
		5	—	3409
		6	1	3410
		—	2	3418
		—	3	3419
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35	....	August	7,	1566, 3210
36	....	September	18,	*Obsolete*
37	....	October	16,	*Statements, obsolete*
38	....	November	1,	*Statements, obsolete*
39	....	"	1,	*Obsolete*
40	1805	January	4,	685, 2204
41	1806	February	1,	1516
42	..	April	9,	2803
43	....	November	8,	*Superseded by Nos.* 7 *and* 10 *of vol.* 3
44	1807	March	28,	858, 938, 2155
45	....	April	4,	2049, 2175
46	....	August	8,	*Superseded by Reg. VIII.* 1818
47	1808	January	21,	*Superseded by cl.* 2, *sec.* 5, *Reg. XX.* 1817
48	....	April	2,	2325
49	....	"	13,	676
50	1809	April	19,	2707
51	....	May	10,	1569
52	....	"	17,	*Statements, obsolete*
53	....	"	31,	1886
54	....	August	15,	*Statements, C. O. No.* 98 *of vol.* 3
55	....	September	12,	2803
56	....	October	3,	*Obsolete*
57	....	November	4,	1358, 1987
58	....	December	12,	371
59	....	"	12,	3356
60	....	"	12,	*Statements, obsolete*
61	....	"	28,	812
62	1810	January	23,	366
63	....	February	20,	*Obsolete*
64	....	"	24,	*Obsolete*
65	....	March	5,	2223
66	....	"	6,	2281
67	....	"	18,	2001
68	....	"	27,	*Statements, obsolete*
69	....	April	17,	2035
70	....	"	27,	1137, 2661, 2663
71	....	June	25,	*Obsolete*
72	....	August	2,	2296
73	....	"	23,	457, 458, 2203
74	....	"	30,	2065
75	....	September	6,	339
76	....	November	22,	*Superseded by cl.* 2, *sec.* 9, *and cl.* 5, *sec.* 11, *Reg. XX.* 1817
77	....	December	27,	676
78	1811	January	4,	278, 457
79	....	"	4,	3344
80	....	"	17,	1275, 1887
81	....	"	17,	2632
82	....	"	21,	*Obsolete*
83	....	February	28,	*Superseded by cl.* 2, *sec.* 14, *Reg. XVII.* 1816
84	....	March	14,	*Obsolete*
85	....	April	12,	*Superseded by Reg. III.* 1812, *and C. O. No.* 155 *of vol.* 2
86	....	"	25,	*Statements, obsolete*
87	....	"	25,	*Court of Circuit, obsolete*
88	....	May	2,	2266
89	....	June	13,	451
90	....	"	20,	455
91	....	July	16,	338
92	....	"	18,	*Statements, obsolete*
93	....	"	18,	278
94	....	"	25,	960

No.	Year.	Date.	Paragraph.
95	1811	August 1,	2272
96	....	" 15,	*Superseded by secs.* 14 *and* 20, *Reg. XX.* 1817
97	....	" 22,	2267
98	....	" 22,	2053, 2286
99	....	" 22,	*Statements, obsolete*
100	....	" 22,	2670
101	....	September 5,	844, 851
102	....	" 24,	965
103	....	October 24,	2220
104	....	November 15,	844
105	....	December 4,	907
106	....	" 10,	2265, 2267
107	....	" 26,	2056
108	1812	January 30,	*Statements, obsolete*
109	....	February 6,	*Statements, obsolete*
110	....	March 5,	*Superseded by sec.* 8, *Reg. XVII.* 1817
111	....	April 2,	835
112	....	May 7,	491
113	....	June 4,	*Statements, C. O. No.* 98 *of vol.* 3
114	....	" 25,	2045
115	....	July 9,	3173
116	....	August 21,	2051, 2282, 2298
117	....	September 9,	845
118	....	December 3,	2239
119	....	" 3,	*Statements, obsolete*
120	1813	January 28,	*Statements, obsolete*
121	....	March 11,	839
122	....	" 11,	939, 2080
123	....	April 29,	*Suttee*
124	....	August 12,	*Superseded by sec.* 4, *Reg. XII.* 1818
125	....	October 22,	764
126	1814	January 27,	966
127	...	February 3,	*Statements, obsolete*
128	....	" 24,	*Statements, obsolete*
129	....	March 24,	*Statements, obsolete*
130	....	April 14,	*Statements, obsolete*
131	....	" 14,	*Superseded by Reg. VIII.* 1818
132	....	May 26,	2068
133	....	June 23,	*Superseded by cl.* 5, *sec.* 13, *Reg. XX.* 1817
134	....	" 30,	2025
135	....	July 6,	*Jail, obsolete*
136	....	" 20,	*Statements, obsolete*
137	....	August 3,	98, 99, 102
138	....	" 9,	2069
139	....	" 13,	*Superseded by cl.* 13, *sec.* 9, *Reg. XX.* 1817
140	....	September 6,	899
141	....	October 5,	2991
142	1815	January 4,	*Suttee*
143	....	" 25,	952
144	....	" 25,	*Statements, C. O. No.* 98 *of vol.* 3
145	....	March 1,	2034
146	....	" 22,	*Superseded by cl.* 1, *sec.* 14, *Reg. XVII.* 1816
147	....	April 18,	1269
148	....	May 3,	*Statements, obsolete*
149	....	" 11,	*Superseded by sec.* 20, *Reg. XX.* 1817.
150	....	August 10,	*Superseded by Nos.* 183 *and* 204 *of vol.* 2
151	....	" 10,	2212
152	....	" 17,	*Statements, obsolete*
153	....	" 17,	839
154	....	September 28,	*Court of Circuit, obsolete*
155	....	November 8,	*Statements, obsolete*
156	....	" 20,	468
157	....	December 7,	2043
158	1816	January 11,	2150
159	....	February 24,	1049, 2677
160	....	" 24,	853
161	....	" 24,	2273
162	....	" 24,	*Obsolete*
163	....	March 29,	*Statements, obsolete*
164	....	May 29,	*Statements, obsolete*
165	....	June 12,	2045, 3428
166	....	" 12,	*Statements, obsolete*
167	....	July 3,	974
168	....	" 3,	*Statements, obsolete*
169	....	" 10,	2078
170	....	" 24,	674
171	....	August 21,	*Statements, obsolete*
172	....	September 23,	*Obsolete*
173	....	" 23,	840
174	....	" 23,	*Obsolete*
175	....	October 16,	974
176	....	" 31,	*Statements, obsolete*
177	....	November 13,	632
178	....	" 13,	*Superseded by cl.* 2, *sec.* 19, *Reg. XX.* 1817
179	....	" 13,	*Court of Circuit, obsolete*
180	....	" 20,	2227
181	1817	January 23,	952
182	....	February 26,	*Statements, obsolete*
183	....	April 30,	2047, 2089, 2181
184	....	June 25,	*Suttee*
185	....	July 9,	850, 2283
186	....	" 19,	702, 902
187	....	" 31,	698, 1056
188	....	August 14,	*Obsolete,*
189	....	September 4,	*Obsolete*
190	....	" 11,	*Suttee*
191	....	October 21,	2463
192	....	December 1,	2818
193	1818	January 27,	774
194	....	February 4,	*Superseded by Reg. XII.* 1818, *and C. O. No.* 326 *of vol.* 1
195	....	" 4,	3408
196	....	" 24,	1387, 2156, 2157, 2164, 2165
197	....	April 8,	*Superseded. See No.* 142 *of vol.* 2, *and No.* 119 *of vol.* 3
198	....	" 8,	1570
199	....	" 20,	837
200	....	" 20,	*Obsolete*
201	....	" 20,	2656
202	....	" 20,	*Rescinded by C. O. No.* 250 *of vol.* 1
203	....	" 28,	604
204	....	July 2,	2116
205	....	" 16,	2033
206	....	" 23,	685, 2205
207	....	August 20,	2086
208	....	October 30,	*Obsolete*
209	....	" 30,	2079
210	....	November 19,	685, 2205
211	....	December 11,	2107
212	....	" 26,	*Obsolete*
213	1819	January 14,	*Obsolete*
214	....	" 22,	*Obsolete*
215	....	" 25,	3178
216	....	April 16,	3126
217	....	" 20,	942, 2083, 2153
218	....	May 21,	*Obsolete*
219	....	July 9,	*Obsolete*
220	....	August 2,	*Court of Circuit, obsolete*
221	....	" 13,	*Suttee*
222	....	" 20,	*Statements, obsolete*
223	....	" 27,	942, 2083
224	....	" 27,	942, 2083
225	....	October 8,	*Suttee*

No.	Year.	Date.	Paragraph.
226	1819	November 5,	*Statements, obsolete*
227	....	December 24,	*Court of Circuit, obsolete*
228	1820	January 7,	2871
229	....	„ 14,	2021
230	....	„ 14,	*Obsolete*
231	....	April 7,	*Superseded by sec. 4, Reg. 1 V.* 1820
232	....	„ 14,	*Statements, obsolete*
233	....	May 8,	*Superseded by No.* 183 *of vol.* 3
234	....	„ 19,	1828
235	....	June 2,	*Suttee*
236	....	„ 30,	*Obsolete*
237	....	July 7,	*Obsolete*
238	....	August 18,	2176, 2297
239	....	September 1,	663, 3082, 3142, 3176
240	....	„ 8,	2168
241	....	November 10,	1888
242	1821	January 26,	1774
243	....	May 4,	738
244	....	„ 25,	*Suttee*
245	....	June 8,	2600
246	....	July 27,	*Obsolete*
247	....	November 24	1178
248	1822	March 15,	947
249	....	„ 15,	*Statements, obsolete*
250	....	„ 29,	2055
251	....	April 27,	738
252	....	„ 27,	2172
253	....	May 3,	1386
254	....	„ 10,	1571, 1917
255	....	„ 17,	2177
256	....	„ 24,	*Suttee*
257	....	„ 24,	*Suttee*
258	....	June 28,	2031
259	....	July 19,	904
260	....	August 9,	2228
261	....	„ 9,	*Statements, obsolete*
262	....	„ 16,	*Statements, obsolete*
263	....	„ 16,	817
264	....	„ 16,	491
265	....	„ 16,	*Obsolete*
266	....	„ 24,	2228
267	....	September 13,	*Statements, obsolete*
268	....	„ 13,	*Suttee*
269	....	October 9,	*Statements, obsolete*
270	....	November 29,	2073
271	....	December 12,	*Statements, obsolete*
272	1823	January 10,	1136
273	....	February 21,	950
274	....	March 21,	*Statements, obsolete*
275	....	May 2,	3126
276	....	„ 16,	771, 1180
277	....	June 6,	1337
278	....	July 4,	*Suttee*
279	....	November 21,	2333
280	....	„ 21,	*Statements, obsolete*
281	....	„ 26,	464
282	1824	January 16,	*Statements, obsolete*
283	....	„ 23,	817
284	....	„ 23,	*Obsolete*
285	....	March 19,	2044
286	....	April 2,	2221
287	....	„ 2,	1152
288	....	„ 17,	682, 2247
289	....	„ 30,	3342
290	....	May 7,	*Statements, obsolete*
291	....	„ 7,	3115
292	....	„ 14,	2242
293	....	„ 21,	911, 2870
294	....	June 18,	2242, 2243
295	....	„ 18,	2242
296	....	„ 18,	*Court of Circuit, obsolete*
297	1824	June 25,	3093
298	....	July 23,	*Suttee*
299	....	„ 23,	*Suttee*
298*	....	August 6,	*Court of Circuit, obsolete*
299*	....	September 24,	*Statements, obsolete*
300	....	„ 24,	*Statements, obsolete*
301	....	November 26,	*Obsolete*
302	....	December 17,	800
303	....	„ 31,	1712, 1722, 2905
304	1825	January 7,	319
305	....	„ 14,	2222
306	....	„ 28,	556
307	....	February 11,	95, 98, 99, 100, 101
308	....	„ 11,	2455
309	....	March 25,	*Statements, obsolete*
310	....	April 9,	*Statements, obsolete*
311	....	July 1,	*Suttee*
312	1826	February 3,	*Obsolete*
313	....	March 3,	*Statements*
314	....	May 12,	*Obsolete*
315	....	June 23,	*Obsolete*
316	....	August 18,	2239
317	....	October 27,	*Suttee*
318	....	December 8,	*Obsolete*
319	....	„ 29,	*Statements, obsolete*
320	....	„ 29,	2066
321	....	„ 29,	1701
322	1827	February 16,	*Court of Circuit, obsolete*
323	....	April 6,	659
324	....	„ 20,	738
325	....	May 4,	3429
326	....	„ 18,	*Obsolete*
327	....	August 24,	*Obsolete*
328	....	„ 24,	*Statements, obsolete*
329	....	October 3,	1200
330	....	„ 3,	*Obsolete*
331	....	„ 3,	1716
332	....	„ 19,	*Suttee*
333	....	November 16,	974

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No.	Year.	Date.	Paragraph.
1	1828	February 1,	366
2	....	March 20,	*Obsolete*
3	....	May 16,	738
4	....	June 6,	172, 669
5	....	July 18,	1324
6	....	„ 18,	*Superseded by No.* 183 *of vol.* 2
7	....	August 15,	*Obsolete*
8	....	September 26,	*Obsolete*
9	....	„ 26,	2657
10	....	„ 26,	*Obsolete*
11	....	October 3,	*Court of Circuit, obsolete*
12	....	„ 3,	*Obsolete*
13	....	November 28,	*Suttee*
14	....	December 5,	3286*n*.
15	1829	January 10,	*Obsolete. See No.* 58 *of vol.* 2
16	....	February 27,	*Statements, obsolete*
17	....	March 13,	1114
18	....	April 3,	1807
19	....	„ 3,	247
20	....	„ 14,	*Statements, obsolete*
21	....	„ 24,	493, 1347
22	....	May 1,	2732, 3343
23	....	„ 1,	2245
24	....	„ 8,	814, 815
25	....	„ 15,	*Obsolete*
26	....	„ 15,	2657
27	....	June 5,	*Commissioner of Circuit, obsolete*
28	....	„ 5,	1785*n*.
29	....	„ 26,	*Statements, obsolete*

* Sic. in orig.

No.	Year.	Date.	Paragraph.
30	1829	July 24,	619
31	....	„ 24	*Obsolete*
32	....	„ 24,	685, 2206
33	....	August 7,	247
34	....	„ 7,	*Statements, obsolete*
35	....	„ 21,	1988
36	....	„ 21,	*Suttee*
37	....	„ 28,	*Obsolete*
38	....	„ 28,	2087
39	....	Sept. 11,	*Statements, obsolete*
40	....	Oct. 9,	1216
41	....	„ 9,	1785*n.*
42	....	Nov. 13,	*Statements, obsolete*
43	....	Dec. 4,	2965, 2967, 2970, 2975
44	1830	Jan. 8,	*Statements, obsolete*
45	....	„ 8,	*Obsolete. See Nos.* 133 & 192 *of vol.* 2
46	....	„ 22,	*Obsolete*
47	....	Feb. 19,	1138, 2202
48	....	„ 26,	400, 645
49	....	„ 26,	653
50	....	„ 26,	1342
51	....	March 26,	*Statements, obsolete*
52	....	April 16,	2288
53	....	„ 23,	2225
54	....	July 16,	Para. 2 | 766
..	....	.....	3 | 767
..	....	.....	4 | 769
..	....	.....	5 | 770
..	....	.....	6 | 775, 936
..	....	.....	7 | 780
..	....	.....	8 | 788
..	....	.....	9 | 962
..	....	.....	10 | 962
..	....	.....	11 | 962
..	....	.....	12 | 784, 816
..	....	.....	13 | 259, 643
..	....	.....	14 | 259
..	....	.....	15 | 661
..	....	.....	16 | 654, 661
..	....	.....	17 | 654
..	....	.....	18 | 662
..	....	.....	19 | 693
..	....	.....	20 | 455
..	....	.....	21 | 1773
..	....	.....	22 | 458
..	....	.....	23 | 822
..	....	.....	24 | 953
..	....	.....	App. | 674, App. C. Nos. 9 and 10
55	....	„ 23,	1193
56	....	„ 30,	*Statements, obsolete*
57	....	Sept. 3,	3360
58	....	„ 3,	*Statements, obsolete*
59	....	„ 24,	2106
60	....	„ 24,	*Statements, obsolete*
61	....	Oct. 1,	1971
62	....	Nov. 12,	*Statements, obsolete*
63	....	Dec. 3,	248, 2720
64	....	„ 10,	*Rescinded by No.* 7 *of vol.* 3.
65	....	„ 10,	*Ditto*
66	....	„ 10,	1899
67	....	„ 17,	2211
68	....	„ 17,	530, 2045
69	....	„ 17,	*Obsolete*
70	....	„ 31,	*Statements, obsolete*
71	....	„ 31,	2245
72	1831	Jan. 7,	*Statements, obsolete*
73	....	„ 7,	*Statements, obsolete*
74	....	„ 7,	*Commissioner of Circuit, obsolete*
75	....	„ 7,	*Obsolete*
76	....	„ 7,	*Obsolete*
77	....	„ 28,	*Statements, obsolete*
78	1831	Feb. 4,	817
79	....	March 25,	*Superseded by No.* 120 *of vol.* 2
80	....	„ 25,	*Rescinded by No.* 215 *of vol.* 2
81	....	May 6,	*Statements, obsolete*
82	....	„ 13,	2350, 3428
83	....	„ 27,	*Statements, obsolete*
84	....	June 3,	956
85	....	July 15,	1715
86	....	„ 15,	*Statements, obsolete*
87	....	„ 22,	1581
88	....	Sept. 9,	1302
89	....	Nov. 18,	*Statements, obsolete*
90	....	„ 25,	*Statements, obsolete*
91	....	„ 25,	*Statements, obsolete*
92	....	Dec. 30,	*Statements, obsolete*
93	1832	L. P. Feb. 10,	*Rescinded by No.* 7 *of vol.* 3
94	....	L. P. „ 10,	*Rescinded by No.* 7 *of vol.* 3
95	....	March 9,	2087, 2091
96	....	L. P. „ 9, / W. P. „ 12,	*Obsolete*
97	....	W. P. „ 12,	497
98	....	„ 23,	656, 687
99	....	April 9,	*Statements, obsolete*
100	....	„ 13,	768, 968
101	....	„ 27,	*Statements, obsolete*
102	....	May 11,	*Repetition of No.* 58 *of vol* 1
103	....	„ 11,	*Ditto*
104	....	„ 18,	798
105	....	„ 18,	*Statements, obsolete*
106	....	W. P. June 8,	1977
107	....	„ 22,	*Statements, obsolete*
108	....	„ 22,	686, 762
109	....	„ 22,	670, 673
110	....	„ 20,	973
111	....	July 20,	693
112	....	„ 27,	*Obsolete*
113	....	L. P. „ 27,	794
114	....	L. P. „ 27,	*Rescinded by No.* 7 *of vol.* 3
115	....	Aug. 3,	743
116	....	W. P. „ 10,	*Statements, obsolete*
117	....	„ 24,	2182
118	....	W. P. „ 24,	1383
119	....	W. P. „ 24,	2209
120	....	L. P. Sept. [illegible]	1977
121	....	Oct. 5,	1274*n.*
122	....	L. P. „ 19, / W. P. „ 12, / W. P. Nov. 30,	*Address of native judges, omitted*
123	....	Oct. 26,	*Obsolete*
124	....	Nov. 2,	*Statements*
125	....	„ 16,	340
126	....	L. P. „ 16,	1333
127	.... / 1833	W. P. „ 16, / L. P. Jan. 18,	832
128	1832	Dec. 14,	*Address of native judges, omitted*
129	....	W. P. Nov. 1,	776, 788
130	....	Dec. 21,	1639, 1726
131	1833	Jan. 4,	2306
132	....	„ 18,	838
133	....	Feb. 15,	618
134	....	„ 22,	2230
135	....	„ 22,	687, 761, 777, 797, 953, 955, 963
136	....	April 6,	1383
137	....	June 7,	50
138	....	Aug. 16,	*Rescinded by No.* 7 *of vol.* 3
139	....	Sept. 13,	2319
140	....	L. P. Nov. 1, / W.P. „ 1, / Dec. 6,	2224
141	....	Nov. 22,	753, 1343
142	1834	Jan. 31,	1559

No.	Year.	Date.	Paragraph.
143	1834	March 21,	2307
144	....	W. P. May 15,	*Statements, obsolete*
145	....	L. P. June 6,	*Statements, obsolete*
146	....	„ 6,	943, 2218
147	....	„ 13,	*Superseded by No. 160 of vol. 2*
148	....	Aug. 8,	963
149	....	„ 8,	973
150	....	Sept. 19,	*Obsolete*
151	....	„ 25,	520
152	....	Oct. 24,	*Statements, obsolete*
153	....	W. P. Nov. 21,	*Statements, obsolete*
154	....	L. P. „ 21,	*Statements, obsolete*
	1835	W. P. Feb. 6,	
155	1834	L. P. Dec. 12,	Appendix D. and E
156	....	April 11,	814
157	....	L. P. Dec. 5,	1338
	....	W. P. Nov. 7,	
	1835	Jan. 23,	
158	....	L. P. „ 31,	*Obsolete*
159	....	Feb. 6,	758
160	....	„ 6,	1040
161	....	„ 6,	*This is a mere repetition of No. 159*
162	....	„ 20,	903
163	....	„ 27,	1950
164	....	L. P. March 6.	*Obsolete*
		W. P. April 3,	
165	....	„ 3,	*Obsolete*
166	....	W. P. „ 10,	1950
		L. P. Sept. 4,	
167	....	May 15,	2215, 2245
168	....	L. P. „ 22,	814
169	....	„ 29,	636, 637, 749, 3281, 3294
170	....	W. P. „ 29,	1950
		L. P. July 3,	
171	....	„ 3,	1953
172	....	L. P. „ 10,	1345
		W. P. June 12,	
		Aug. 7,	
173	....	W. P. July 17,	1270
174	....	„ 17,	1040
175	....	„ 24,	631
176	....	W. P. „ 31,	Appendix D. and E.
177	....	W. P. Aug. 14,	1562, 1934
178	....	„ 21,	2245
179	....	Sept. 25,	1339
180	....	L. P. „ 25,	1362
181	....	W. P. Oct. 2,	827, 841
182	....	W. P. „ 16,	1362
183	....	Nov. 20,	2257
184	....	„ 27,	1334, 1349
185	....	W. P. „ 27,	*Statements*, 671, 688
186	....	Dec. 13,	3415
187	....	„ 24,	2070
188	....	„ 24,	*Statements, obsolete*
189	1836	Jan. 2,	*Statements, obsolete*
190	....	L. P. „ 15,	671, 688, *Statements*
191	....	„ 15,	955
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Coolies, begarees, &c. are in no case to be compelled to carry burthens, whether for the public service or private individuals, 1827—persons transgressing this rule to be punished discretionally by the magistrate, *id.*—this applies only to porters or coolies, 1828—and prohibits the civil authorities from compelling their service, *id.*

Definition of the term "begar," 1827*n*.

Carriage cannot be seized for the conveyance of military stores not with troops on the line of march, 1829.

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Tradespeople and artificers are not to be forced to follow camps whether with or without remuneration, 1832.

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The ryot who has cultivated the crop is in possession, and not the planter from whom he has received advances, 3250—if the ryot has taken advances from two parties, they must both be referred to the civil court, *id.*—in which one of them on giving security might be allowed to cut and carry away the disputed plant, *id.*
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Police to apprehend persons giving out that they are employed as informers by magistrate or superintendent of police, unless they can show a written authority, 279.
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INJURIES, PERSONAL. See ASSAULT.

INQUESTS.

By police Officers.

On receiving information of a case of murder, unnatural or suspicious death, or violent and dangerous wounding, the darogah is to proceed to the spot in person or to depute a proper officer, 1750.

INQUESTS.—*Continued.*

By police Officers.—Continued.

Private enquiries to be made before holding the public inquest, 1751.

Persons dangerously wounded are to be examined on solemn affirmation, 1752.

All particulars regarding the wounds or other corporal injuries are to be recorded in the sooruthal, 1753—but the practice of probing wounds in order to ascertain their size is prohibited, 1753*a*.

To describe particularly the place in which the body of the deceased or the wounded person has been found; to report whether the crime appears to have been committed on the spot; whether it appears from the circumstances under which the body is found that the deceased met his death by his own hands, or by misadventure, or whether any and what grounds exist for believing that the deceased has been killed by others; also, to ascertain the name of the wounded or deceased person, 1754.

If the deceased is a stranger, to ascertain where he was last seen or where he slept the previous night, 1755.

If the offenders are unknown, to ascertain whether any person bore enmity to the deceased or wounded person; the particulars of such enmity; when he was last seen in their company; and whether any angry expressions were used, 1756.

Enquiries to be made from the village hujjams, &c. if the unknown offender is supposed to have been wounded, 1756.

The above enquiry is to be committed to writing in the presence of respectable witnesses, and signed by them, and sent to the magistrate, 1757—immediately, in place of a report, 1758.

In cases of murder the police officers should endeavour to obtain and secure the instrument with which the crime was committed, 1759.

Assistance to be procured for wounded person, who is not to be moved until he is able to travel without risk, 1760.

Police officers to explain to the inhabitants that they should not remove persons seriously wounded to the thana, but give immediate notice of the occurrence, 1760.

In cases of doubtful death, the body of the deceased is to be forwarded to the magistrate in the most expeditious manner practicable, 1761.

If the timely attendance of the police officers cannot be obtained, the principal persons of the village should hold the inquest; and forward the report to the darogah or to the magistrate, 1762.

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Inquest to be held on the body of every prisoner who dies in jail by the native doctor and others, 2115.

If there is the slightest doubt the body is not to be removed until it has been examined by the civil surgeon himself, 2116.

INSANE HOSPITALS.

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Magistrate to visit frequently, 2331—to listen to complaints of patients and endeavour to redress them, *id.*—to make quarterly reports to the session judge, 2332—and to notice any instances of misconduct on the part of the medical officer, *id.*

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Any difference of opinion between the magistrate and the surgeon to be referred to the session judge, 2334.

Superintending surgeons to make regular visits; to control the practice of the surgeon; to see that male and female patients are separated; that frequent recourse is had to baths; that patients are not placed under undue restraint, 2335—to attend particularly to the diet and clothing of patients; to the cleanliness of the hospital, and the behaviour of the keepers, 2336.

INSANE HOSPITALS.—*Continued.*

Surgeon to visit morning and evening, and whenever necessary; and during each visit to see every patient, 2337.

Monthly return to be furnished by surgeon to magistrate, 2338—and to superintending surgeon, *id.*

Hospital registers and medical diaries to be kept up; and to be open to inspection by the magistrate, judge, and superintending surgeon, 2339.

Diet, clothing, and all other necessaries, except wine and European medicines, to be supplied by native sircars under the authority of the magistrate, 2340—clothing, bedding, &c. to be of the same description as that used by the patients in ordinary life, 2341—a sufficient stock of every article to be kept on hand, *id.*—when fresh supplies are required, the surgeon is to indent on the magistrate, 2342.

Diet to be provided by native purveyors under the inspection of the surgeon, 2343—quality and quantity of food left to the discretion of the surgeon, 2344—generally to approximate to the best sorts of the food used by the patients in ordinary life, *id.*—surgeon to sign a monthly voucher for articles received from the purveyor, 2345—wine used to be Madeira, and to be supplied by the commissariat department on the indent of the surgeon and magistrate, 2346.

European medicines and apothecaries' utensils to be supplied through the Medical Board, 2347.

Hospitals to be lighted up at night; the wards, &c. to be kept clean; and the walls to be white-washed half-yearly, 2348.

Patients to be indulged with innocent amusements; and surgeon may make the necessary disbursements on this account, 2349.

Patients to be admitted on the recommendation of the magistrate or session judge, and without such sanction none are to be admitted, 2350—magistrate to forward a descriptive roll in duplicate, with the column of remarks filled up by the surgeon, *id.*

Patients to be discharged without reference to the magistrate, 2351—except in cases of imperfect recovery and quiet or harmless disease, *id.*—or when being charged with the commission of a penal act, they have been sent to the hospital as insane on apprehension or at the time of trial, 2351*n*—the magistrate is never to discharge a patient without the consent of the surgeon, 2352—difference of opinion to be referred to superintending surgeon, *id.*

What establishment of servants is allowed, 2353—magistrate in communication with surgeon may augment or diminish, *id.*—the salaries of the servants to be fixed by the magistrate; but they are under the control and orders of the medical officer, who is to take care that the patients are treated by them with forbearance and humanity, 2354—in gross cases the surgeon may discharge a servant; but in general he is previously to obtain the consent of the magistrate, *id.*

Expences of hospital, including surgeon's allowances and the pay of the establishment, to be charged in separate monthly contingent bills, and submitted by the magistrate for audit in the customary manner, 2355.

Annual statement of total expenditure to be furnished by magistrate to government, 2355—showing also the ordinary daily allowance for each patient, 2356—also a return of the servants; and a statement of miscellaneous contingencies, *id.*

INSANE PERSONS.

Treatment of.

Police officers how to proceed in regard to, 3427.

Magistrates how to dispose of, 3428—if sent to the insane hospital, history of derangement to be furnished by surgeon, *id.*

If acquitted of murder on the ground of insanity, parties taking charge to give security, 3429—forms of sentence and engagement in such cases, *id.*

Applications for release of persons convicted of penal acts while insane, what to contain, 3429*a*—professional history of case always to be kept by surgeon, *id.*

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Treatment of.—Continued.

Permission of government to be obtained for removal to insane hospital of a prisoner who has become insane while under sentence, 3429*b*.

European British subject, reported insane, magistrate how to proceed towards, 3430—his property to be secured, and his friends informed, *id.*—may be made over to his friends, *id.* his property may be sold to defray expences, 3431—if sufficient property not forthcoming, magistrate may defray expences, 3432—such proceedings to be reported to government, 3433.

If sent to insane hospital, descriptive roll to be forwarded, 3434.

Trial of.

How far insanity affects penal liability in English law, 75, 76—so, in Mahomedan law, 82, 84—so, in Regulation law, 94, 95.

In the case of insanity supervening subsequent to the perpetration of the crime, and prior to conviction, the law officer is to declare what the futwa would have been if insanity had not intervened, and sentence is to be passed accordingly, 96.

The Nizamut Adawlut may convict and punish, though the futwa of their law officers declare the punishment barred by a doubt as to the prisoner's sanity, when he committed the act charged, provided they consider him not to have been insane at the time, 97.

If a person charged before a magistrate with a punishable offence is alleged to be insane, he is to cause an enquiry to be made to ascertain the fact of insanity; and if it be proved, he is to close his proceedings with a statement to that effect and submit them to the session judge with a sufficient number of witnesses, 98—the judge is to examine the prisoner and witnesses, and to direct the magistrate to keep him in custody or to send him to the insane hospital, 99—on being pronounced sane he is to be brought before the magistrate and regularly put on his trial, *id.*

If prisoner is found insane on trial before the sessions, a similar course of proceeding is to be adopted, and the trial postponed until his recovery, 100.

A final acquittal on the ground of insanity should not be pronounced without a regular trial, 101.

Session judge may finally acquit parties proved to have committed penal offences while laboring under insanity, 101—those cases only to be reported to the Nizamut Adawlut, in which a reference would have been necessary, if the prisoner had been a responsible agent, *id.*

The Nizamut Adawlut cancelled a sentence passed by the session judge when the insanity of the prisoner at the time of the occurrence was proved subsequently to the conviction, 101*a*.

A commitment on a charge of "murder while in a state of insanity," was held to be erroneous and absurd, 104—the magistrate is not competent to determine the question of sanity, *id.*

Practice and precedents in cases of crimes committed during insanity, 105, *et seq.*

INSURRECTION. See STATE OFFENCES, and JAIL *Offences.*

INTERLOCUTORY ORDERS.

Act XXXI. 1841 does not apply to appeals from interlocutory orders in cases under trial, 1298.

The session judge may exercise interference in criminal trials pending before the lower courts, and can take cognizance of appeals from interlocutory orders not having reference to matters of police, 1299.

INTERPRETATION OF REGULATIONS.

One part to be construed by another, so that the whole may stand, 47.

When a new regulation is to be considered as a virtual repeal of the old one, 48.

If a regulation that rescinds another is itself afterwards rescinded, the original regulation is considered as revived, 49.

INTESTATE.

Any property of persons dying intestate, which comes into the hands of a magistrate, is to be forwarded immediately to the civil judge, 1190.

Register of such property to be kept in prescribed form, 1191.

INTOXICATION. See DRUNKENNESS.

INTOXICATING DRUGS, ADMINISTERING.

A charge of administering drugs of a merely intoxicating character with intent to rob, does not fall within the provisions for robbery attended with corporal injury endangering life, 3118—nor those for robbery accompanied with wounding or other corporal injury, 3120—those trials only can be referred in which the drugs used were poisonous, 3118.

Form of indictment to be used in cases of administering intoxicating drugs with intent to rob, 3119.

Precedents of trials, 3131.

INTOXICATING DRUGS, *rules regarding sale of.* See OFFENCES AGAINST GOVERNMENT, OPIUM.

ISSUING *forged coins, documents, &c.* See COINING, and FORGERY.

JAIL.

Jail discipline.

Government may issue orders for the introduction of a system of, 2013.

Control and superintendence over jails, the persons confined in them, the establishments thereunto belonging, and the places of banishment or transportation of prisoners, is vested in the magistrate and session judge under the orders of the local government, 2014.

Government is to be addressed direct, and no communications regarding the jail are to be made to the Nizamut Adawlut, 2015.

The officer in direct charge of jail is to be held solely responsible, 2016—the monthly, half-yearly, and annual reports are to be forwarded through the session judge to government; and the orders of government are to be transmitted through the session judge, *id.*

The duty of inspecting and supervising the Allipore jail is vested in the judge of the 24-pergunnahs, 2017.

Neither the superintendent of police nor the session judge can issue orders direct to jail officers regarding the management of the jails, 2018.

Magistrate is to visit the jail weekly, 2019.

The surgeon is to visit the hospital daily, and the jail weekly; and to report to the magistrate on the health of the prisoners, their food, the cleanliness of the jail, and other points connected with the care and condition of the prisoners, 2019.

The judge is to visit the jail monthly, and to make such remarks in the periodical reports as appear requisite, 2020—he may take armed men with him on his visits, 2021.

A set of written rules is to be prescribed by the magistrate regarding the admission of articles and persons into the jail; and the jailor and his deputy are responsible for their due observance, 2022.

All rules prescribed by the magistrate relating to the interior economy of the jail, and the duties of the jailor and guards are to be translated and hung up in the jail, 2023.

Jailor is not to delegate his personal duties to any person without the order of the magistrate, 2024.

Daily reports to be furnished to magistrate in English of the prisoners in jail and in the hospital, 2025.

Orders for receiving or discharging prisoners are to be signed by the magistrate or his assistant and addressed to the jailor, 2026.

Prisoners are to be counted morning and evening, 2027.

Working tools to be collected at night and deposited without the jail, 2028—prisoners to be searched for weapons or instruments, *id.*

JAIL.—*Continued.*

Jail discipline.—Continued.

Jailor to visit every part of the jail morning and evening, to prevent the iron bars from being cut or the walls undermined, 2029.
Keys of the wards to be lodged with the jailor or his deputy at night, 2030.
In jails with a chopper roof, hookas not to be allowed at night, 2031—the light to be placed under the immediate inspection of the sentry, *id.*—every precaution to be taken against fires, *id.*
The doors and shutters are not to be closed at night, if there are iron gratings, 2032—the prisoners should have the means of opening or closing the shutters at will, *id.*—holes should be made in the shutters to admit fresh air, *id.*
With certain exceptions the prisoners need not be confined to their wards at night, 2033—but in such case the magistrate should adopt precautions to ensure the safe custody, 2034.
Military guards are exempted from the duty of guarding the prisoners when taken out to ease themselves, 2035.
No buildings to be erected within the walls or boundaries of the jail, 2036—prisoners are not to be allowed to possess or have access to private dwellings near the jail; and their families are not to be allowed to erect such nearer to the jail than the magistrate judges proper, *id.*
Friends of prisoners not to be permitted to enter the jails, 2037.
Prisoners not to keep shops in the jail or its vicinity, 2038.
Engagements to be made with moodies to prevent frauds and abuses, and jailor to see that they are fulfilled, 2039—scales and weights used by the moodie to be inspected by magistrate, *id.*—guard to be stationed at moodie's shop when the articles are supplied, 2040.
Intoxicating liquors and drugs are prohibited, 2041—drunkenness, gaming, and other immoralities to be prevented, 2048.
Sale, barter, &c. are prohibited, 2042.
Inquest to be held if a prisoner commits suicide in order to ascertain the cause; and the result to be reported to session judge, 2043—the body of a prisoner who dies in jail is not to be removed until the native doctor has held an inquest, 2115—and in cases of doubt the surgeon is to inspect the body, 2116.

Over-crowded jail.

Magistrate to make immediate arrangements for extra accommodation, and to report to government, 2044.
Lists of prisoners how to be prepared and forwarded in case of their removal to other jails, 2257.
Responsibility of magistrate in regard to accommodation, 2045.
Session judge may authorize the construction of kutcha buildings, 2046—but those only whose terms of imprisonment do not exceed 6 months are to be confined therein, *id.*—report to be made to government, *id.*
Prisoners sleeping without the jail how to be secured, 2047—precautions against fire to be observed, *id.*—sentries to examine the chains, *id.*

Classification of prisoners.

What descriptions are to be kept separate, 2048.
Males to be prevented from having communication with females, 2048.
Similar distinction to be observed when the prisoners are at work, 2049.
No intercourse to be permitted between the different classes, 2050.
Prisoners in *hajut* to be allowed no communication with other prisoners, 2050.
Security prisoners to be kept distinct from those convicted of specific offences, 2051.
Non-laboring prisoners are to be kept separate from those under sentence of labor in irons, 2052.

JAIL.—*Continued.*

Classification of prisoners.—Continued.

Particular attention to be paid by magistrate and session judge to these rules, 2053.

Cleanliness.

Points to be regarded in the erection of buildings in order to secure, 2054.
Lime to be allowed for purification of privies, 2054.
Wards to be white-washed once in every quarter or oftener; and prisoners to be prevented from defiling the walls, 2055.
Magistrate responsible that the wards are kept clean, 2056.
Prisoners should be allowed to bathe daily; and means of ablution should be provided for them in the vicinity of the jail by digging a tank, if possible, 2057, 2058.
Particular care required that the water in the jail wells is not polluted, 2059.
The clothes of the prisoners is to be regularly washed at stated periods, 2060.
Use of mud floors for wards objectionable, 2078.

Hospital.

Prisoners complaining of sores or sickness are to be sent to the hospital, 2061—and surgeon is to see in his weekly inspection that all prisoners really sick are sent in to the hospital, 2062.
Native doctor to reside in the vicinity of the jail, 2063.
A sufficient number of charpoys to be provided for the hospital, 2064.
The surgeon or native doctor may order a prisoner's fetters to be removed in case of sores or illness, 2065—it is to be done in the presence of the jailor, who is to report the circumstances to the magistrate, *id.*
When endemic cholera breaks out in the jail, the convicts are to be removed to a healthy spot in the district, 2066.
Prisoners sick in sub-divisions to be sent to the sudder hospital if possible, 2067.
Prisoners whose sentence expires while in the hospital have the option of remaining in hospital till cured, 2067.
Civil surgeons to supply officers in charge of sub-divisions with cholera medicines, 2067.
Quarterly reports of the sick and casualties to be forwarded by civil surgeon to Medical Board, 2068.
Magistrate's writers and mohurrirs to assist the surgeon in drawing out the reports, 2069.
Surgeon to give explanation if the mortality during the month exceeds one per cent., and a special report is to be sent to government in cases of extraordinary mortality, 2070.

Diet, Lower Provinces.

Rations to be given dry, 2071.
Two cooked meals allowed every day, 2071—diet table, *id.*
Quality of food and quantity, to be under unremitted supervision, 2071.
Water to be supplied during work, 2071.
Prisoners may reserve portions of their meals to eat during the day, 2071.
No money to be allowed to prisoners, nor bartering, 2071.
Musters of provisions to be approved by the surgeon and sealed up, 2071—contract to be reduced to writing, *id.*
Formation of messes, 2071.
Quarterly list of prisoners exempted from messing to be sent to government, 2071.
Prisoners in *hajut*, and those sentenced to simple imprisonment without labor, are exempted from messing, 2072.
Mess-cooks how to be employed when not preparing the meals, 2071.
Magistrates to provide cooking pots, 2071.
Surgeon to inspect the meals once a week, 2071.
Contractors to be allowed to build store-houses near the jail, 2071—in certain cases one-half of the cost to be defrayed by government, *id.*
Contracts how to be made, 2071.

JAIL.—*Continued.*

Diet, Lower Provinces.—Continued.

Washing and shaving to be performed by contract, for which one pice per week per prisoner is allowed, 2071.
How far these rules are applicable to female prisoners, 2071.
Treasurer not to be allowed profit on exchange of rupees into pice, 2073.
Bills how to be drawn for pay of rations, and of establishment of burkundazes for working prisoners, 1428.

Diet, Western Provinces.

Two cooked meals not allowed, 2074.
Daily ration is 12 chittacks, but may be one seer, 2074.
What quantity allowed of salt, ghee, pepper, tobacco, and wood, 2074.
Barter prohibited, 2074.
Rations how to be served out, 2074.
Barbers and washermen to be entertained on the part of government, 2074—but aggregate expence not to exceed one pice per week per man, *id.*
Messing system, how far it may be introduced, 2074.
Grinding wheat in the jail recommended, 2075.

Clothing.

Allowance of clothes and blankets to be served out at stated periods, and an account rendered of the old ones, 2076—prisoners not allowed to dispose of them, *id.*
Blankets to be furnished in the cold season, 2077—to be returned if prisoner confined for a short period, *id.*—in the western provinces an additional blanket is allowed, 2079.
Quantity and description of clothing, 2078.
Clothing may be supplied at the discretion of the magistrate to *hajut* and indigent prisoners, 2079.

Fetters.

May not be adjudged when the labor is commutable to fine, 929.
If no specific orders are issued by the Nizamut Adawlut or the sessions court regarding, the magistrate may use his discretion according to the circumstances of the case and the rank and condition of the prisoner, 2080—so, in the cases of soldiers and camp followers made over to civil authorities, 2081—but he should not impose, except for the preservation of discipline, 941.
Magistrate may impose, on prisoners who have bought exemption from labor, if refractory, 2082.
Not to be imposed on persons confined for misdemeanors, except in cases of special necessity, in which case magistrate is to record his reasons, 2083.
Female prisoners not to be subjected to, except in special cases, 2084.
To be made of a light and uniform construction, 2085—to consist of two bars connected by a moveable ring, 2086—but chains may be substituted, 2087—not to exceed in weight one seer and a half, 2086—but magistrate may alter the weight, *id.*
Leather mozehs to be used with, 2087.
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Any description of carriage may be seized for troops marching; but that kept for hire is to be taken first, 1822.
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Complaints of the misbehaviour of troops, if well-founded and of sufficient importance, to be made by collectors to the board of revenue, and by magistrates to the nizamut adawlut, 1825.
Private individuals, or military officers not with detachments of troops, may apply to the nearest police officers to assist them in providing bearers, boatmen, carts, or bullocks, or other supplies, 1826—police officers to furnish the aid required if a sufficient number of persons accustomed to act as bearers or boatmen, or the requisite number of carts and bullocks occasionally let for hire can be procured, *id.*—but they are not to compel other persons to act as bearers or boatmen, nor to provide bullocks or carts kept solely for private use or the purposes of agriculture, *id.*
Persons whose service is so compelled may return from the first police station in the next zillah, 1826.
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No one to be dispossessed of lands or houses in, by commanding officer, although he refuse to be registered or be discharged from the registry, *id.*

Magistrate not to pull down houses or dispossess in, on the requisition of the commanding officer, 194.

The superintendence of the police in cantonments and military bazars is vested in commanding officer, 195.

So in bazars of corps as regards persons registered therein and bonâ fide carrying on occupation in respect of which they are registered, 196.

All persons serving with any part of the army and receiving pay in a public department appertaining thereto, if borne upon the fixed establishment, are subject to local regulations of cantonment, &c. and liable to court martial for breach thereof, 197.

So, menial servants of officers, 198.

Persons registered as attached to bazars subject, while so attached, to local regulations, and liable to court martial for breach thereof, 199.

Retainers of army (as above), menial servants of officers, and persons registered in bazars, liable to native court martial for petty assaults, &c., 200.

So, if charged with thefts unattended with violence and not exceeding 100 rupees, committed within limits of cantonment or bazar, 901

Any other person committing such offence to be made over to magistrate, 202.

In the case of all other crimes the offenders of whatever description to be arrested by commanding officer, if found within the limits, and made over to magistrate, 203.

As regards persons attached to bazars of corps, if petty offence is committed above one coss from the station of the corps or its position on a march, and the offender is taken in the fact, the magistrate has a concurrent jurisdiction, 204.

Limits of military and civil jurisdiction.

Under the above rules the military authority in cantonments extends only to petty offences committed within the limits of a cantonment by a retainer of the army, the servant of an officer, or a person registered as attached to a bazar, 205—more grievous offences are cognizable only by magistrate, *id.*—precedent, 206.

In places within civil jurisdiction native officers and soldiers accused of offences not military to be delivered over to magistrate, 207—and all officers and soldiers to assist in their apprehension, *id.*

Military guards in charge of prisoners in civil jurisdiction, if guilty of neglect, or connivance at escape, or other breach of duty, to be made over by magistrate to commanding officers to be tried by court martial, 208—but this does not apply to criminal charges not involving a breach of military duty, 209.

When the commanding officer has to make over the case to the magistrate, he cannot take the informations of the prosecutor and witnesses on oath, 210—but he can administer any oath which a justice of the peace is competent to administer, 368.

Jurisdiction of magistrate in cantonments.

A charge against a resident in a cantonment or military bazar may be preferred directly to the magistrate, if the accused has not been already apprehended by the police thereof, or if the charge is not within military jurisdiction, 211.

In such cases the magistrate has power to serve processes in the cantonments or military bazars; and commanding officers are bound to aid them, 212.

Processes of arrest, criminal or civil, to be executed within such limits are to be taken to the commanding officer to be

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Magistrate to give effect to sentence of general court martial adjudging imprisonment with labor among the convicts of the civil power, 219—so, when the sentence of a court martial adjudges imprisonment or imprisonment with labor, 220—so, if court martial adjudges imprisonment with labor or with solitary confinement, or both, 221.

A person once tried by court martial cannot be tried on the same charge in any other court whatever, 222.

When native soldiers and camp-followers are made over to the civil authorities to undergo sentences of imprisonment adjudged against them by courts martial; and no specific order is passed regarding the imposition of fetters, magistrate may use discretion, 940.

Trial of European British subjects attached to the army.

If serving with troops beyond the territories subject to the presidency of Fort William, or more than 120 miles from the presidency, and apprehended by or brought before a magistrate on a criminal charge, he is to be made over to his commanding officer, or to the commanding officer of the nearest military station, 223.

Magistrate on written application is to assist in apprehending any such person charged with a criminal offence, 224.

Processes issued by courts martial assembled for trial of such persons to be enforced by magistrate in civil jurisdiction, 225.

Magistrate not to receive or inquire into charges against such persons unless the military authorities neglect to bring them to trial, in which case he is to report to government, 226.

These rules do not apply to European British subjects not attached to the army, 227—nor to offences committed by persons attached to the army within 120 miles of the presidency, 228.

MILITARY DRESS.

No person is allowed to dress his servants in the uniform of sepoys, 1810.

No person is allowed to wear such dress, 1811.

Civil authorities are not to clothe their servants in such dress, 1812.

Sepoys are not to wear their uniform while absent from their corps, unless on public service, 1813.

Persons disobeying these orders to be deprived of their dress by military commanding officers or magistrates; unless they are in the military service of the Company, in which case they are to be sent to their corps, 1814.

Police officers are to apprehend persons wearing military dress, 1814, 1815—or sepoys wearing their uniform while on leave, 1816.

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Magistrate cannot issue a general order forbidding persons to carry arms, 1816*a*.

MILITARY GUARDS.

Applications for permanent guards to be made to commanding officer with a statement of the service necessary to be performed, 532 - the commanding officer may suspend compliance with the application and refer to the commander-in-chief, *id.*

Permanent guards not to be increased without the sanction of government, 533.

The same rules to be observed in applications for temporary escorts, 534.

Monthly statement of guards, &c. employed, to be forwarded by magistrate to government, 535.

If guilty of neglect, or connivance at the escape of prisoners, or other breach of duty, to be made over by magistrate to commanding officer to be tried by court martial, 208—but this does not apply to criminal charges not involving a breach of military duty, 209.

Exempted from the duty of taking out prisoners to ease themselves, 2035.

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MILITARY STORES.

Cannon, fire-arms, or military stores, cannot be transported without a pass, 2610—on penalty of confiscation, *id.*

This does not apply to fowling-pieces, pistols, swords, or other arms kept for private use, *id.*

Arms, ammunition, military stores (except those kept for private use) are not to be exported from Company's territories without a license, 2611—under penalty of forfeiture, *id.*—and fine of 500 rupees, *id.*

Any person keeping in one place, or in places not 3 miles from each other, 50 pounds of gunpowder without a license, liable to fine of 500 rupees, and the powder to be forfeited, 2612.

Government may authorise exportation of such stores without license, 2613.

Chief magistrate of Calcutta authorised to grant such license, 2614—collector of customs may also allow exportation under order of government, *id.*

Carriage cannot be seized for the conveyance of military stores not with troops, 1829.

MINERAL PRODUCTIONS.

Magistrates are prohibited from making enquiries into the mineral productions, &c. of a district, through the police, without the sanction of the superintendent, 492.

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Confession of, admissible in evidence, if *doli capax*, 466.

Period of reaching full age in Mahomedan law, 90.

The clandestine marriage of a female ward (also a minor) is not an offence cognizable in the criminal court, 3407.

The guardian or executor of a minor, whose estate is not under the court of wards, stands in the place of the minor, 1864.

MISADVENTURE.

Homicide by, in the prosecution of a lawful act and without malignant intention subjects to no punishment, 2876.

If the homicide is proved to have been accidental, the magistrate is to release the accused, 2877.

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MISDEMEANOR.

Meaning of term, 67.

Magistrate may punish as a misdemeanor, under his general powers, any act which is declared by the regulations to be an offence, but for which no punishment is specified, 72, 514.

The sessions court, unassisted by a Mahomedan law officer, is incompetent to declare that to be a crime, which is not so declared by the regulations, 825.

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How far it affects penal liability, in English law, 81.

MISSING PERSONS.

Precedents.

In cases of murder, where the body has not been found, the prisoner has sometimes been sentenced to death; but generally to imprisonment for life, 2978.

So, where the fact of the murder was not clearly proved, *id.*

A conditional sentence of imprisonment until the missing person be produced, or it be proved that he died by means not implicating the prisoner, was usually passed, *id.*—but such practice has lately been held objectionable, *id.*—if there is no presumption that the missing person has been murdered, *id.*

Evidence that the deceased had not been heard of since last seen in the prisoner's company, not held sufficient for conviction, *id.*

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It is no justification in murder that the mistress or relation of the prisoner was detected in criminal intercourse with another man, 2885.

MITIGATION OF PUNISHMENT. See NIZAMUT ADAWLUT, *power of mitigation and pardon.*

MOCHULKAS.

Recognizances for appearance.

In sessions cases, to be taken by magistrate from complainant to appear and carry on the prosecution, and from the witnesses to attend and give evidence, 1160—to be for a specific sum and to contain a clause declaring the amount forfeited to government if its condition is not performed, *id.*

To be taken by police officers from prosecutors and witnesses whose attendance is necessary at the criminal courts, 350, 1161—how, to determine the day to be fixed for their appearance, *id.*

May be taken by magistrates from parties in cases before them to secure their attendance during the investigation, 1162.

All such to be on plain paper, 1162.

Should be required from defendants in petty cases as seldom as possible;—but if necessary, the amount of the stamp must in the first instance be provided by the prosecutor to be refunded by the defendant at the conclusion of the case if the magistrate considers it proper, 1163.

What stamp is requisite, 1393.

Recognizances to keep the peace.

Persons convicted of a violent breach of the peace, or of an intention to commit such, may be required by the court passing the final order, to give a mochulka, with or without security, to keep the peace for one year if the sentence is passed by the magistrate, or 3 years if passed by the session judge or nizamut adawlut, 2790.

Such court also may require security, and order that the party failing to provide such be imprisoned for corresponding periods, 2791.

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Recognizances to keep the peace.—Continued.

A magistrate issuing a warrant of arrest, and authorising the officer to whom the warrant is committed to receive bail for the appearance of the accused, may also authorise him to require security to keep the peace while the charge is under investigation, 2792.

Police officers, in cases of manifest necessity, may require security to keep the peace in addition to bail, 2793—the security bond is to be drawn out on plain paper, 2794.

Magistrate may take mochulkas, for the maintenance of the peace, as well from British subjects as from others, although the party to be bound thereby has not been convicted of any specific offence, 2795*a*.

In aggravated cases, the magistrate may require security, to keep the peace in addition to the recognizance, 2795*b*.

If the period, for which the party is to be bound to keep the peace with or without the additional security, does not exceed one year, the order of the magistrate needs no confirmation, 2795*c*—and in default of the security or recognizance he may commit the party to prison in the civil jail until he shall do what has been required of him, *id.*

If the period exceeds one year, the magistrate is to record his opinion with the amounts of the recognizance and security and the length of the period, which is in no case to exceed 3 years; and if the party does not furnish such recognizance and security the proceedings are to be laid before the session judge for his orders. If the judge confirms to any extent the orders of the magistrate, he is to direct that the party be imprisoned in the civil jail until he shall do what has been required of him, 2795*d*.

No party is to be kept in prison for a longer period than that for which the recognizance and security have been required, 2795*e*.

Appeal in such cases governed by general rules of appeal, 2796, 2796*a*.

Magistrate cannot order darogah to require a mochulka from a person until he has been heard in his defence, 2797.

Magistrate cannot require security or mochulkas except in the cases above specified, 2798.

Rules under which the magistrate may release prisoners, confined in default of security, 2799, 2799*a*.

Such prisoners are not to be sent to the jail of another district, *id.*

How the sureties can obtain release from their responsibility, *id.*—and the continuance of such responsibility after the death of the surety, *id.*

Such recognizances if forfeited are to be realized as decrees of the civil court, 2799*b*.

If the security is forfeited, the magistrate is to call upon the surety to show cause why the penalty should not be paid, 2799*c*—the penalty is recoverable by attachment and sale, in default of which the surety may be imprisoned for 6 months, *id.*

Forms of mochulka and security bond, 2799*d*.

If the magistrate considers it necessary to take recognizances in his capacity of justice of peace, and is in doubt as to their legality, he should consult the advocate general, 2800—through the nizamut adawlut, 1379.

The amount of the penalty of recognizances taken from European British subjects is not limited by the amount of penalty which a magistrate can levy from such persons under 53 Geo. III. cap. 155, sect. 105, 2802.

Assistants with special powers are not competent to require mochulkas and security, 2803.

Miscellaneous.

Not to be taken from zumeendars, munduls, or ryots, as security, for the performance of duties required from them by the regulations, 1887.

The criminal courts are authorized to require mochulkas from their native officers in such sums as they judge proper, 1939.

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Miscellaneous.—Continued.

The nazirs are to enter a mochulka for the good behaviour of the naibs, mirdahs, and peons, whom they appoint, 1965.

MOFUSSIL.

Magistrates ought frequently to visit the interior of their districts, 496.

When a magistrate proceeds into the mofussil, he is to report to the superintendent of police the dates of his departure and return, and the cause, 497—in the western provinces he must obtain leave from the commissioner, *id.*

Officers in charge of sub-divisions should be as much as possible upon the move, and investigate serious cases on the spot, 592.

MOFUSSIL COURTS.

Jurisdiction of, 145.

Execution of process of, within the limits of the supreme court. See PROCESSES.

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MOHURRIR, POLICE.

Second officer at police thana, 1518.

To exercise the powers of a darogah during the darogah's absence, *id.*

Special duty to preserve the records, and to write reports and other papers under the direction of the darogah, *id.*

MOKHTARS AND AGENTS.

For the prosecution.

The attendance and deposition of the complainant is not indispensable in preferring a criminal charge, 708—in certain cases the written plaint, presented by an authorized agent, with the evidence of one or more witnesses, is sufficient for receiving the same, *id.*

But in ordinary cases the complainant must appear to institute and conduct the proceedings before the magistrate and sessions court, 709—and agents are not permitted to interfere unless substantial reason be shown why the complainant cannot attend to carry on the prosecution in person, *id.*

Before the sessions the judge may always cause the attendance of the prosecutors if their *viva voce* evidence is necessary, unless they are Mahomedan or Hindoo women of rank, 710.

For the defence.

In bailable cases magistrate may allow the defendant the option of appearing by attorney, 711.

Session judge may order a magistrate to admit a party to appear and answer by attorney, without calling for the proceedings, 712.

Session judge may admit a person held to bail for trial at the sessions to appear thereat by vakeel, if sufficient reason is shown, 713, 793—but may subsequently require his attendance in person, *id.*

The attorney in such cases need not be an established pleader of the civil court, 714.

Defendants on trial before a sessions court and personally present may avail themselves of the advice of vakeels and agents; but such vakeels cannot plead or interfere in any way, 715.

General mokhtars.

The admission of such agents is clearly recognized in the regulations, 719—but the admission in each case is left to the discretion of the local authority, *id.*

A general power of attorney, after being attested and acknowledged, may be returned at the discretion of the authority, 720.

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General mokhtars.—Continued.

Police darogahs are not to permit any established agent to be permanently employed at the thana on the part of any landholder or other person, 721—but such may be occasionally employed at the thana, *id.*

Police officers are forbidden to employ mokhtars at the sudder station for official purposes, 722—in particular cases the magistrate may authorize the employment of a vakeel, *id.*

Miscellaneous.

The authorized pleaders of the civil court cannot practice in the foujdaree court without the sanction of the judge, or unless they are employed on the part of government, 716.

But the pleaders of the sudder dewanny adawlut may practice in the nizamut adawlut, 1038.

Appeals and miscellaneous cases may be conducted by any agent, 717.

The courts are not to assist in enforcing payment of the remuneration of a mokhtar, 717—nor can a suit to recover it be instituted before a magistrate under Reg. VII. 1819, 718, 3413.

Money is never to be paid to an agent save under specific authority conveyed in the vakalutnamah, 723.

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Magistrate may admit accomplice to give king's evidence on a conditional promise of pardon, 280.

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Orthography of native names of men and places to be preserved as closely as possible, 798.

Correctness and uniformity to be observed in spelling the names of prisoners in the record of evidence, 797.

If several prisoners bear the same name, the father's name should always be specified, whenever the name of either is mentioned, 797.

Prisoners to be referred to by their names, and not by the numbers they bear in the calendar, throughout the depositions of witnesses and the futwas, 795.

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NATIVE MINISTERIAL OFFICERS.

Appointment and removal, in superior courts.

Nizamut adawlut, superintendent of police, and session judge, have the final power of dismissing and appointing their officers, 1902.

Resignations of head officers to be received and recorded in open court, 1903.

Head officers to be informed on what grounds they are considered worthy of dismissal, and to be called upon for their defence, 1904.

The removal or resignation of the head officers of the judge's court to be reported to nizamut adawlut within 10 days, 1905.

Judge to report dismissal of all officers on not less than 10 rupees a month for the formation of a register, 1906—extracts of such register to be communicated to the several authorities annually, *id.*.

Monthly reports of appointments and removals to be furnished to the civil auditor, 1907.

Appointment and removal, in magistrate's court.

Superintendent of police has power to confirm the appointments and removals of all native officers receiving salary of 10 rupees and upwards, 1908.

All such officers to be nominated by magistrate; and full report of past employments, character, and qualifications to be made to superintendent of police, 1909.

Appointment is not final until confirmed by the superintendent, *id.*

But magistrate may make temporary appointments, *id.*—and officers so appointed can legally act before confirmation, 1910.

The nominating officer is to certify that the person nominated is not his private servant, 1911.

The resignation of such officer is to be received and recorded in open court, and transmitted without delay to the superintendent with the nomination of his successor, 1912.

The cause for the removal of any such officer is to be reported to the superintendent, 1913—without delay, 1914—no report to be made to nizamut adawlut, 1932.

A special report of dismissed officers on not less than 8 rupees per mensem to be made to superintendent for the formation of a register, 1915—extract of register to be sent annually to the magistrate, *id.*

Magistrate may immediately suspend officers in cases of gross misconduct, neglect, or incapacity, reporting the same, 1916.

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Appointment and removal, &c.—Continued.

Suspended officer, if restored, is entitled to arrears of salary, 1917—officer unnecessarily delaying to restore is to pay the extra charge incurred thereby, *id.*

The appointment and removal of officers, drawing a less salary than 10 rupees, rests with the magistrate; but he is to select proper persons; and is not to remove them without cause; and is to record his reasons for removing them, 1918—in such cases his orders are final, 1919.

Magistrate may fine any officer for neglect of duty one month's salary, 1920—but no greater fine, 1921—nor can he sentence to hard labor merely for neglect, *id.*

Session judge cannot interfere with any order of a magistrate appointing, suspending, or removing any ministerial or police officer, 1922.

Session judge, or nizamut adawlut, may order the dismissal of any officer convicted before them of a criminal offence, 1923, 1933.

Appeals from magistrate's orders of dismissal of ministerial or police officers lie to the superintendent of police, 1924—of all other officers to the session judge, 1925.

Appeals may be forwarded by dawk if written on stampt paper, 1926—or may be presented to the magistrate, who is to forward them with the papers of the case, if written on stampt paper and presented within the period allowed, 1927—if the appellant forwards his petition direct to the superintendent of police, he must forward with it copies of the proceedings appealed against, 1928.

Superintendent may of his own accord remove any officer, whom he is competent to remove on reference from the magistrate, 1929.

Superintendent cannot declare a native officer perpetually excluded from future employ in his division, though he can decline to sanction his nomination, 1930.

Orders of superintendent in regard to the appointment, suspension, or removal of a ministerial officer are not open to revision by nizamut adawlut, 1931—reports of dismissals are not to be made to them, 1932—but the nizamut adawlut, or government, can order the removal of a native officer on just and sufficient ground, 1933.

In the case of officers on the establishment of magistrate and collector, employed indiscriminately in both departments, the appeal will lie to the commissioner, 1934—unless a regular criminal trial has been held, when it lies to the session judge, *id.*

Monthly report of dismissals and appointments to be made to the superintendent of police, 1935.

Appointment, removal, &c.—general rules.

All native officers are liable to removal without proof of any specific act of criminality, 1936.

The imposition of heavy fines is objectionable; if an officer will not do his duty he should be dismissed, 1937.

The unaccountable possession of much property is a sufficient ground for dismissal, 1938.

Mochulkas for good behaviour may be required from native officers, 1939.

All native officers are to make a solemn declaration before entering upon the duties of their office, 1940—the European officers are to attest such declarations as publicly read and subscribed before them, 1941.

General duties to be performed by, 1942—not to interfere in any case except by order, *id.*

Officers are prohibited from employing their private servants in the discharge of public duties, 1943—and from employing public servants on their private business, 1944.

Covenanted officers are not to incur debt to any native officer under their authority, or to any one personally connected with such officer, 3438.

No person being a creditor of any judge or magistrate is to be appointed to any official situation on his establishment, 3443—precautions to be taken against such appointments,

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No alteration to be made in the distribution of salaries or in the number and designation of native officers without the sanction of government, 1945—nor can the superintendent of police authorize any such addition or alteration, 1946.

Not to be entertained on lower salaries than those fixed, 1947.

Not to be kept acting for long periods, 1948—report for confirmation to be made within 6 months, *id.*

No office is hereditary; government may abolish any office at any time, 1949.

Schedule of landed property is required on their appointment from all officers drawing not less than 20 rupees per mensem, 1950—and if they make any subsequent acquisition, it is to be reported within a month, *id.*—evasion of these rules punishable by dismissal, *id.*—these schedules where to be registered, *id.*

Security is to be taken from all officers entrusted with public money, 1951—on what points the surety is to bind himself, *id.*—sufficiency of security to be tested yearly and report made, *id.*—which report is to be certified in particular form, 1952—officers vouching for the sufficiency of securities make themselves responsible for the safety of the public funds, 1953—in *lower provinces* such security statements to be sent to the superintendent of police, 1954—form of security-bond to be used in the *western provinces*, 1955—all security-bonds are to be registered, 1956—nazir is liable on a civil prosecution to damages for wilful misrepresentation of the sufficiency of security, 1957—rule for the endorsement and safe custody of public securities deposited in such cases, 1958—when the collectorate treasurer takes charge of the foujdaree treasury, an additional clause is to be inserted in the security-bond, 1959.

One department is not to receive applications for employment from persons in the employ of another department, 1960.

Representations from uncovenanted officers relating to their services are to be forwarded direct to government by the post; and not by the head of the office, 1961.

Travelling allowance in the lower provinces, 1962—in the western provinces, 1963.

Leave of absence, 1964.

Nazirs are to appoint their own naibs and mirdahs or peons, and may remove them with the sanction of the judge or magistrate; and are to execute a mochulka for the good behaviour of those persons whom they appoint, 1965.

Nazirs are to receive a commission of one anna in the rupee on the sale of unclaimed property, 1966.

English writers, natives of India, are subject to the same rules as other amlah, 1967.

Charges against.

If charged with or suspected of embezzlement of money entrusted to them in their official capacity, summary inquiry to be instituted; and officer to give security for attendance, or to be kept in confinement, 1980.

If charge is proved on such inquiry, limited time to be allowed for payment of the money into court; in failure of which it is recoverable as a decree of the civil court, 1981.

Salary may be attached; and disbursing officer is required to effect the attachment, 1982.

But money embezzled by an officer in his official capacity is to be refunded to the person who deposited it without reference to the solvency or otherwise of the defaulter, 1983.

Summary decree must be passed before the money is recoverable, 1985.

NATIVE MINISTERIAL OFFICERS.—*Continued.*

Charges against.—Continued.

Magistrate cannot compel the restitution of property obtained by false pretences or extortion, 3230.

Similar mode of proceeding to be observed, when a native withholds any accounts; the summary judgment to order delivery of accounts and also to impose fine, 1986.

Government are not responsible for property stolen from a magistrate's malkhanah; but if neglect or want of care is proved, it may be recovered from the officers in charge, 1984.

Altering or changing official papers, punishable as for forgery, 1987—and no excuse that it was done by order, *id.*

A judge may conduct a summary inquiry in cases of embezzlement by his own officers, but cannot commit for such offence; the proceedings must be made over to the magistrate who will act on his discretion, 1988.

Ministerial officers are amenable for corruption to the courts to which they are attached; but such charge cannot be received unless the complainant makes oath to the truth of it, 1989.

Hazirzaminee security is not to be demanded from the accuser in the first instance; but may be required during the enquiry, 1990.

The nizamut adawlut may receive charges against the officers of a sessions court, or of the superintendent of police, or of a magistrate, 1991—how to proceed on receiving such charges, *id.*

The superintendent of police may receive charges against the ministerial officers of the magistrates, 1992—how to proceed on receiving such charges, *id.*

How the nizamut adawlut is to proceed if there appears any objection to referring the charge to the court to which the accused officer is attached, 1993.

How the superintendent of police is to proceed, if there appears any objection to referring the charge to the magistrate to whose court the accused is attached, 1994.

Charges of corruption and extortion against ministerial officers are civil actions, and are to be prosecuted in the civil courts; and the courts are to direct the complainants accordingly, 1995—what award the civil court is to adjudge, 1996.

The courts may suspend an accused officer until the final decision is passed, if they see cause for so doing, 1996.

If the charge is not proved, the accused may sue the accuser in the civil court, 1997.

Law officers are subject to the same rules, 1998.

The above rules do not preclude a criminal prosecution for corruption, extortion or embezzlement, 1999.

Any law officer, or ministerial officer, may be prosecuted criminally for corruption, extortion, or embezzlement, whether the civil action has been brought or not, and whatever is its result, 2000.

In such cases the prosecution should be public, conducted by the government vakeel, 2001.

All cases requiring exemplary punishment should be prosecuted criminally before the magistrate, by the government pleader; but if the court deems this measure unnecessary, the complainant is at liberty to prosecute criminally or in the civil court, 2005.

The sufferers in a case of extortion can give evidence against the accused, 3217.

Magistrate may entertain charges against the officers of a commissioner's court, 2002.

Such cases are punishable by the session judge by imprisonment for 7 years without labor or stripes, 2000—special report of convictions under these rules to be sent to government, 2003.

Magistrate may himself pass sentence in cases of bribery or corruption, or commit to the sessions, 2004—in petty cases he cannot commit, 3212.

If the charge is not proved in the criminal court, the accuser may be committed for perjury, 3214.

The civil court may enforce the refund of money corruptly taken, without the institution of a civil action, on produc-

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Charges against.—Continued.

tion of certified copy of the conviction in the criminal court, 2006.
Native revenue officers guilty of bribery and corruption, how punishable, 2007.
Giving bribes to the amlah of a public officer for corrupt purposes, is a misdemeanor, 2008—the person who gave the bribe cannot be called upon to give evidence to the fact, as it would criminate himself, 3216.
Khazanchies and other native officers entrusted with public money are prohibited from making use of it to their own advantage or that of any other individual, 2009—persons infringing this rule are liable to 7 years' imprisonment by sentence of session judge, 2010—and if that sentence appears inadequate the trial may be referred, *id.*—special report of such convictions and sentences to be made to government, 2011—a government peon making away with money entrusted to or collected by him is not punishable under this rule, but as for a misdemeanor, 3190.
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Case of the treasurer of a collectorate paying money on the illegal and fraudulent orders of the collector, 3192.
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Precedents in cases of extortion, 3231.
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NAVIGATION OF RIVERS.

Removal of obstructions to. See LOCAL NUISANCES, *rivers.*

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NECESSITY.

How far it excuses crime. See CRIMES, PERSONS CAPABLE OF COMMITTING.

NEGLECT.

Occasioning the death of a child, punishable by *deyut*, 2894.

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NIZAMUT ADAWLUT.

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To be held in Calcutta, 975—and a separate court at such station in the western provinces as government from time to time may fix, 976—same powers vested in both courts, 1031.
Number of judges of which the court is to consist, 977.
Oath to be taken by the judges, 978.
Appointment of register, and oath to be taken by him, 979.
What duties may be transferred to the register, 980.
The court may assign any of the duties of the register to the deputy or assistant register, 981.
Any judge to whom the duty is delegated may receive petitions, and proceed according to the regulations; but all petitions are to be received in open court, 982.
Depositions of witnesses may be taken by the judges in open court, or by the register, *id.*
The judges may regulate the mode and order of their own proceedings, and the execution of their process, subject to the regulations, *id.*—all process is to be signed by the register, *id.*
In proceedings before the courts, it is not necessary to take any security for costs, 983.
The courts may frame such rules of practice as are found requisite; and are to submit them to the government of India, *id.*
To be an open court, and to sit as often as business requires, 984.

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Proceedings not to be kept in English further than is convenient, 985—copies and translations are required only in appeals to H. M. in council, and references to government, *id.*
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Futwas and sentences.

Sentences to be regulated by Mahomedan law except when the regulations expressly direct a deviation from it, 987.
Duties of law officers and mode of taking futwas, 988—the court is to pass final sentence on perusal of the proceedings of the sessions court and the futwas of the law officers of both courts, *id.*
A single law officer may give futwa, unless he differs from the law officer of sessions court, 989.
But futwa need not be taken in every case; the judge or judges may use their discretion in requiring a futwa, 990.
In cases referred merely on account of difference between the session judge and his law officer, futwa may be taken, 991.
If the heir, or the person injured, in cases of murder, wounding, &c. refuses to prosecute, the futwa is to be given as if the parties had come forward, 992.
In giving a futwa of discretionary punishment, the measure of punishment is to be left to be determined by the judges, 993.
The rules enacted for the guidance of sessions courts in regard to discretionary punishment are equally applicable to trials before the nizamut adawlut in which a futwa of discretionary punishment is given, 994.
In cases in which the crime has not been provided for by the Mahomedan law or the regulations, the judges are authorized to pass any sentence not extending to capital punishment, 995.
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Sentences to be passed in cases of dacoity and theft, 996.
Within 3 days after passing sentence, a copy of it sealed and attested by the register is to be sent to the session judge, who is immediately to issue a warrant to the magistrate; and the warrant is to be returned to the sessions court, when the sentence has been executed, with an endorsement, 997—warrants of capital punishment only are to be forwarded to the nizamut adawlut, *id.*

Power to call for and revise trials.

May call for trials of any subordinate court; but cannot enhance the sentence passed, 998. See APPEALS AND REVISION OF SENTENCES.
In a jurisdiction to which a superintendent of police has not been appointed, cases of a miscellaneous nature, other than criminal trials, are not cognizable by the nizamut adawlut, 999—in such cases the appeal lies to the commissioner of circuit as superintendent of police, whose decision can be revised only in the civil court, *id.*—but government may issue any order in any case, *id.*—definition of "criminal trials" and "miscellaneous cases" in the above, 1000.

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Power to call for and revise trials.—Continued.

May pass sentence on a prisoner tried by the magistrate, although the session judge did not hold a fresh trial, 1001.
Revision of interlocutory orders by an inferior court, is to be made by the court at its general English sittings, 1002.
Power of remission or mitigation of punishment is applicable in all cases in which the court revises the sentence of an inferior court, or of their own court, 1003.
If a case is referred merely because the session judge differs from his law officer as to the conviction or acquittal of some of the prisoners while the sentence as regards the others is within his competence, only such parts of the proceedings need be revised as relate to the prisoners in respect to whom the reference is made, 1025.

When judges differ in opinion.

Sentence to issue according to the opinions of the majority, as regards each prisoner, 1004—all differences of opinion to be settled by the voices of the majority; and if only two judges are present when the difference arises, it is to be laid before a third, 1005.
If the difference relates to the amount of punishment, the most lenient sentence to be adopted, 1004.
The concurrent opinion of two judges, who agree in all points, is final although two others differ from them and from each other, 1006.
If the judges present cannot decide in consequence of an equality of voices, the case is to be referred to one of the judges of the other court of nizamut adawlut, who is to decide on perusal of the proceedings, 1007, 1008—so, if only one judge is present and the matter requires the voices of two judges, 1007.
Precedents of cases, in which the judges did not agree as to the sentence to be passed on all the prisoners, and it was therefore issued according to the majority of voices in regard to each individual, 1009, 1010, 1011, 1012.

Power of mitigation and pardon.

A single judge has always the power to remit or mitigate punishment which appears to him more severe than is equitable; but his reasons are to be recorded and communicated to the session judge, and made known to the prisoner in open court, 1013, 1021—even though the session judge does not recommend mitigation, 1022.
But the court can remit only on judicial grounds strictly connected with the case, 1014—if the ground of mitigation is personal to the prisoner, the prerogative of mercy rests with government, *id.*—precedents, 1016*n.*
The court may recommend for pardon persons sentenced to death, 1015.
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Power of remission or mitigation is applicable in all cases in which the court revises the sentence of an inferior court or of their own court, 1003.

Powers of a single judge.

A single judge can hold a sitting of the court and pass orders or sentence upon any trial under reference to it, unless he does not concur with the session judge as to the conviction of the prisoner, 1018—this includes all instances of a difference of opinion upon the guilt or innocence of a prisoner, 1019.
So, the case must be laid before another judge, if the sitting judge does not concur in the mitigation proposed by the session judge, *id.*
He may hold sittings upon miscellaneous references, petitions, and generally upon all matters appertaining to the cognizance of the court, 1020.
Cannot reverse or alter a former decision or order of one or more of the judges of the court, *id.*
If he concurs in the mitigation of punishment recommended by the session judge, he can pass sentence accordingly, 1021

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Powers of a single judge.—Continued.

—and he can mitigate the punishment although the session judge does not recommend it, 1022.
He may reverse or alter the sentence of the lower court in favor of the prisoner, but cannot enhance the punishment, 1023—example, 1024.
He cannot convict in opposition to session judge, if the latter is for acquittal or otherwise in favor of the prisoner, 1027.
If a case is referred, merely because the session judge differs from his law officer as to the conviction or acquittal of some of the prisoners, while the sentence as regards the others is within his competence, only such parts of the proceedings need be revised as relate to the prisoners in respect to whom the reference is made, 1025.
If single judge concurs with the session judge for conviction or acquittal, he can pass final sentence (without reference to the futwa) except for capital punishment, 1026.
The court in such cases is not precluded from revising the whole proceedings, 1028.
If a single judge considers it proper that the matter at issue should be decided by two or more judges of the court, he may always record his opinion, and refer the case to another judge, 1029.
If a trial includes one or more prisoners liable to a sentence of death, a single judge cannot pass final sentence; which requires the concurrent opinion of two judges, 1030, 1026.

Interference with former order of the court.

A full court can revise the proceedings of one or more judges, and modify or annul the sentence or order previously passed, either on the grounds of additional evidence or other circumstances throwing a new light on the case, or generally with reference to the previous decision; but not to the prejudice of the prisoner, 1031—if any of the judges who passed the original sentence is present, the revision is to be made by him; but if two or more judges concurred in the order and any of them is absent, the revision must be by the whole court, *id.*
But former sentence cannot be altered on the ground that the present court differs as to the merits of the case or the quantum of punishment awarded, 1032.
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Authority to grant rewards for meritorious services, 1274.
Power to suspend a session judge, 1035.
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A summary order of the nizamut adawlut to the magistrate is not binding on the civil court, 1036.
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How far copies of letters from or resolutions passed by the court may be granted, 1366.

The nizamut adawlut may prescribe the forms, periods of transmission, and mode of preparation of all reports, calendars, registers, or other statements, 1039.

The court may execute or cause to be executed all lawful process of arrest within the limits of the supreme court as in other places, 1205—the process must be in writing with an English translation and must be signed by one of the judges of the nizamut adawlut, *id.*

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To be drawn out in prescribed forms, 1040.

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Period to be calculated from the date of despatch, *id.*

Precepts and returns to bear the dates of despatch, and not the dates of proceedings, *id.*

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OFFENCES AGAINST GOVERNMENT, OPIUM AND ABKAREE.

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Opium agent to furnish magistrate with a list of opium cultivators from whom he takes engagements, 2526—copies of list to be furnished to police officers with directions to prevent others from cultivating the poppy, 2527—if there is no opium cultivation the police are to be annually instructed to prevent illicit culture, *id.*

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Police and other native officers.—Continued.

All native officers of government are required to give information of illicit cultivation to their superior, who is immediately to transmit it to the abkaree officer, 2528.

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All native officers of government are enjoined to assist in suppressing illicit manufacture of opium by seizing the same, if authorized, or by giving information to their superior, by whom it is to be immediately transmitted to the abkaree officer, 2533—penalty to be adjudged by abkaree officer, *id.*

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Police officers to be furnished with a list of persons licensed to vend opium; and to send in all persons engaged in the illicit sale with the necessary witnesses, 2535—the magistrate is immediately to forward the defendants and witnesses to the abkaree officer, *id.*

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Punishment of police darogahs, cutwals of military bazars, &c. who authorize or connive at unlicensed shops for the sale of spirits, &c., 2537—half the fine to be given to the informer, if the native officer is prosecuted to conviction, 2538—punishment for malicious information, *id.*

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What opium is liable to seizure and confiscation, 2540*n*.

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What officers are empowered to seize all contraband opium with the cattle, &c., used in conveying it, 2540.

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Persons making a seizure are to report within 24 hours to their superior, who is immediately to transmit the report and the opium so seized to the abkaree officer, *id.*

The abkaree officer, together with the magistrate, may seize, detain, and search all boats, carriages, &c. suspected to contain opium, 2541.

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Officer in charge of abkaree mahal requiring the assistance of the police, to apply by roobakaree to the magistrate, who is to cause his police to carry the requisition into effect, 2545.

A magistrate in his magisterial capacity cannot search a house for the discovery of opium *as such*, but he can search houses for any drug which it is necessary for the ends of justice to discover, 2546.

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Magistrate and police officers to support abkaree officers searching houses under a warrant for illicit stills or their produce; but not to enter the zenanas of respectable families, 2548.

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Licensed abkars are bound not to harbour robbers, thieves, or riotous persons; not to receive goods or wearing apparel in barter; to keep their shops shut from sunset till sunrise; to harbour no one during the night; and to give information to the police of suspected persons, 2553.

Police officers to report any breach of these rules, 2554.

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Guilty of disorderly conduct, breach of the peace, or other crimes and misdemeanors, punishable by the magistrate as others, 2555.

Keeping a shop open during prohibited hours is not disorderly conduct punishable by a magistrate; but if it leads to a breach of the peace or other misdemeanor, the conduct of the abkar may be considered disorderly, 2556.

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Fines and imprisonment for.

Scale for commutation of fines to imprisonment, 2605.

Imprisonment for such offences to be in the civil jail only, 2606—except when persons concerned in the illicit manufacture of salt,—or native officers of government causing it to be obtained or manufactured for their own benefit or that of any other person,—or molungees embezzling or illegally disposing of salt,—are sentenced to imprisonment in

OFFENCES AGAINST GOVERNMENT, SALT.—*Continued.*

Fines and imprisonment for.—Continued.

addition to fine; or persons smuggling are sentenced to imprisonment in lieu of fine; in which cases the confinement is to be in the foujdaree jail, 2607.

The warrant of officer adjudicating is authority for the magistrate to hold persons in confinement, 2607.

Illicit manufacture, sale, &c.

All native officers of government to assist in suppressing illicit manufacture by giving instant information to their superior, 2560—penalty for neglect or connivance, *id.*—to be adjudged by salt officers, *id.*—imprisonment to be in the foujdaree jail, 2607.

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All native officers of government to assist in suppressing illicit sale, purchase, importation, transportation, or possession, by seizing the same if authorized, or by giving information to their superior, 2562—such information to be transmitted by magistrate to salt officer, *id.*—penalty for neglect or connivance, *id.*—to be adjudged by salt officers, *id.*

Police officers to give information to the nearest salt officer, and to the magistrate, of illegal importation, transportation, manufacture or adulteration of salt, 2563.

Seizure.

Penalty for forcibly preventing the seizure of suspected salt, or resisting officers authorized to attach in the execution of their duty, 2564.

Penalty for forcibly preventing the lawful arrest of another, or procuring his release after arrest, or the person found with salt in his possession resisting, 2565.

Officers who have seized or are about to seize suspected salt, or the boats, carriages, &c. used in its conveyance, apprehending resistance, may apply for assistance to the police officers, who are bound to afford the requisite aid, 2566, 2567—and cannot exercise any discretion as to the propriety of the seizure, but are to prevent unnecessary violence, 2568—the officers requesting the aid of the police take the responsibility and risk, *id.*

Police officers are not to seize or detain salt in the first instance of their own authority, unless specially empowered by government, 2569—they are to confine themselves to giving information and assisting in the seizure under the orders of the magistrate or salt officers, *id.*—liable for contravention of this rule to dismissal and an award of damages in the civil court, 2570.

When the salt agent or superintendent of chokees proceeds to search for contraband salt within certain limits, he is to summon by written notice the nearest police officer to attend him, and witness the proceeding, 2571.

Salt agent or superintendent, having a police officer in company, may break open the door of the store-house, if it is not immediately opened on requisition, 2572.

If the salt agent or superintendent cannot proceed in person he is to give his warrant to an officer of his establishment not under the rank of jemadar, and to summon the nearest police officer; but no door is to be broken open except in the presence of an agent or superintendent, or of an officer so deputed, and of a police officer, 2573.

But the head officer of a salt chokee or aurung may act for the agent, if the place is more than three cos from the station of the agent or superintendent, 2574.

Penalty if any police officer on such application does not attend or attending refuses to aid, or in any way frustrates the object of the search and seizure, 2575.

Rules to be observed in breaking open any house, &c., 2576—the responsibility, and the determination to break it open, rest with the salt officers only, *id.*

Reports to be made by the salt and police officers to their respective superiors, 2577—in which the date and time of

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Seizure.—Continued.

delivering the notice to the police officers is to be noted, and the cause of any delay which occurs in effecting the search, 2578.

Power to seize salt vested in salt agents and superintendents of chokees, and their assistants, uncovenanted European and subordinate native officers, 2579—and government may vest a like authority in other officers, *id.*

All uncovenanted European or native officers so empowered making a seizure, are to report the circumstances within 24 hours to their superior by whom the report is to be transmitted to the nearest salt officer, 2580.

None but officers so empowered can attach suspected salt, 2581.

Subordinate native officers so empowered, on receiving information of the illegal importation, transportation, or manufacture of salt, are to transmit immediate notice to their superior and to the nearest salt officer, 2582—if the salt is accompanied by a regular pass, they are not to detain it; but if it is unaccompanied by such pass they are empowered to detain it, sending notice to their superior and the nearest salt officer, *id.*—such persons, or others, seizing salt accompanied by a regular pass liable to dismissal and to a suit for damages in the civil court, *id.*

Explanation of terms; rowannah, chalan, charchitty, and atrafee rowannah, 2582*n*.

If salt has been seized by the officers of, or under the orders of, a magistrate, or other officer specially empowered, and the magistrate or other officer considers that it was erroneously seized, he is empowered to release it, 2583.

Magistrate to communicate to salt officers all information received from the police, and all applications made to them for aid in seizing salt, 2584.

When salt is seized as contraband, because unaccompanied by a proper pass, the persons in charge of it are to be apprehended, 2585—those who have power to seize, have also power to arrest, *id.*

Officers empowered to seize salt may stop and search certain vessels, 2586.

Persons arrested are to be carried direct to the nearest salt officer competent to try the case, 2587—no person so arrested is to be released until the case has been legally tried, *id.*

Misconduct of salt-officers.

Penalty for taking fees from any person employed or concerned in the manufacture of salt, or misappropriating advances made to him, or taking or requiring a receipt for a larger sum than was actually paid to him, 2588.

Embezzling salt, or permitting it to be carried off without order, or permitting a larger quantity to be carried off than is mentioned in the order, or giving receipt for a larger quantity than is received, punishable as theft, 2589—and it is sufficient proof that the out-turn of the golah exhibits a deficiency for which the officers in charge cannot account, although there is no direct proof of the unauthorized removal, 2590.

Officer in charge of a golah making away with or not producing the true account of such store, punishable for embezzlement under the general powers vested in magistrate, 2590.

Punishment of salt officers vexatiously and unnecessarily seizing goods, or arresting any person, or detaining any boat, 2591.

Guilty of extortion, punishable under the general regulations, 2592.

Adulteration.

Alimentary salt adulterated with *khares noon* and other descriptions of impure and bitter salt to be confiscated and destroyed, 2593—penalty on persons so adulterating it, or selling salt so adulterated, *id.*—to be adjudged by the magistrate on a summary inquiry instituted on the report

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Adulteration.—Continued.

of the officer seizing such, 2594—magistrate is to order the confiscation, *id.*

Magistrate is to ascertain whether the salt is adulterated by a reference to the civil surgeon, or a committee of merchants, or dealers in salt, or any mode most likely to elicit the truth, 2595.

Magistrate to stay proceedings in such case, if the proprietor of the salt gives security for the fine, and institutes within one month a suit in the civil court against the officer who seized the salt, 2596—but he may dispense with the security for the amount of penalty, and take only bail for appearance if the suit fails or is not instituted, keeping the salt under attachment, 2597—if the suit is not instituted within the month, the original order is to be carried into execution, 2596—while the suit is pending the salt is to be kept under attachment, 2598.

The above rules are applicable to *pungah* salt mixed with certain other kinds; but the penalty is not so high; and such salt instead of being destroyed is to be disposed of as government directs, 2599.

If seizure of such adulterated salt is made by native officers without information from others they are entitled to half the fine, 2600—if the information is obtained from others, the informers and the native officers are each to have one-third of the fine, 2601.

Boats, bullocks, &c. employed in its transportation are to be forfeited and sold; and the proceeds divided as the fine, 2602.

Board of customs, salt and opium, may remit any portion of such fine and penalty, 2603.

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A sudder ameen cannot take deposition on oath in his private dwelling, 3268.

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Separate letters to be written on separate subjects, and short abstract attached, *id.*

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Officer allowing records to fall into disorder, to pay the cost of their re-adjustment, 1359—so, any officer taking charge of records in disorder and failing to make a timely report of their state, *id.*

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Correspondence with officers at Hazareebagh or Lohardugga to be in Oordoo, 1375.

Oordoo to be used in all thuggee proceedings, 1376.

The same style to be adopted in writing Bengallee as is used in the Bengallee version of the regulations, 1373.

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Indents for forms on the government lithographic press are to be made direct to the superintendent for such forms as have been approved of by the court, 1383—accompanied by a specimen on the smallest possible size of paper, 1384—but indents for a year's supply of forms of statements, warrants, &c. are to be submitted on the 1st October to the register of the nizamut adawlut, 1383*a*.

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Circuit houses may be occupied by whom, 1387—session judge may authorize their temporary occupation by public officers, *id.*—no more circuit houses to be built, 1388.

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Has the same power as a magistrate to convict and punish offenders, *id.*
Has concurrent jurisdiction with the magistrate in his jurisdiction, 1463.
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May take charge of any thanas, on visiting any district of his jurisdiction, 1467—in such case he is to exercise the powers of a magistrate therein; and the magistrate of the district has only the same concurrent jurisdiction therein as he has in other zillahs, 1468.
In his capacity of magistrate he is equally subject to the control of the sessions court with other magistrates, 1469.
May direct magistrate to institute case under Act IV. 1840, 2783.
Has the same power as a magistrate to direct the deputation of an European officer, 538.
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May remove or appoint the ministerial officers on his own establishment, 1472—such orders are final, *id.*
The sessions courts are bound to comply with his applications for copies of proceedings in trials before them, 1473.
May correspond either publicly or secretly with the officers of government in every department, 1474—and is to communicate directly with government through the secretary, 1476.
All public officers to co-operate with him, and to afford him every assistance in their power, 1474, 1475—any want of co-operation on the part of a magistrate to be brought to the notice of government, 3042.
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Must be kept fully acquainted by magistrates with the occurrence of all heinous crimes, 3042.
All correspondence of magistrates with government regarding matters of police is to be conducted through the superintendent's office, 1477.
Is under the general authority of the nizamut adawlut; and is to be guided by their instructions on any point not expressly provided for by the regulations or the orders of government, 1478.
To keep a general register of all police establishments, 1527—and to submit to government an annual abstract statement of the strength and expense of all descriptions of police, explaining any increase, and suggesting reductions, 1528—magistrate to furnish him with all required information, and to conform to his suggestions, 1529.
To report on the general efficiency of the police, and on the officers of the department, 3453—and if any officer is disqualified to discharge his duties efficiently, *id.*

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Landholders are prohibited from entertaining, 1479.
Zillahs divided into police jurisdictions ten coss square, in each of which is stationed a darogah with an establishment of officers, 1480—such jurisdictions are numbered and named, *id.*—and magistrates are not to change the names or numbers, or to alter the limits of them without the sanction of government, 1481.
Cities of Patna, Dacca, and Moorshedabad, divided into wards, each guarded by a darogah with a proper establishment, 1482—such wards are numbered and named, and magistrates are not to change the names or numbers, or to alter the limits of them, without the sanction of government, 1483.
Wards to be patrolled throughout the night, 1484—patrols to be furnished with horns, *id.*
Mohulladar and mohulladarin appointed to each ward, to obtain information of offenders concealed, 1485.
City police to be guided by Reg. XX. 1817 in the discharge of their general duties, 1486.

Police establishments, Western Provinces.

The charge of the police is vested in the magistrates and police officers, and subordinate to them in the landholders, who are responsible for the preservation of the peace, 1487.
Landholders entrusted with the police to observe the rules prescribed in Reg. XX. 1817, 1488.
Zillahs divided into police jurisdictions, 1489—of two kinds; sudder, and mofussil, 1490.
Sudder police jurisdiction comprises the city with its environs under the control of a cutwal, with an establishment of darogahs, jemadars, burkundazes, and chokeedars, 1491.
Mofussil police jurisdiction comprises a town with the adjacent country under the control of a darogah with an establishment of jemadars, burkundazes, and chokeedars, 1492—not to exceed 10 coss square, 1493—different arrangements might be made in certain cases, 1494.
All police jurisdictions are numbered and named; and no change is to be made in the numbers, names, limits, or establishments, without the sanction of government, 1495—government may make any alteration, 1496.
Sudder police jurisdiction divided into wards, each guarded by a darogah with a jemadar, burkundazes and chokeedars, 1497—watchmen to be stationed by the cutwal in places requiring special vigilance, and to apprehend those who break the peace, 1498.
Wards to be patrolled throughout the night, 1499—patrols to be furnished with horns, *id.*
Mohulladar and mohulladarin appointed to each ward, to obtain information of offenders concealed, 1500.
Bhutiarehs, and persons in charge of public saraees, and ghat manjees, to give daily report of travellers, *id.*

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Police establishments, Western Provinces.—Continued.

Private watchmen to act in concert with police officers, and are under the control of the cutwals and darogahs, 1501—to be dismissed at the requisition of the magistrate, *id.*
Full powers of a mofussil police darogah may be entrusted to a tehsildar, landholder, farmer, or other person, 1502—magistrate to report if he considers such special arrangement advisable, 1503.
City police to be guided by Reg. XX. 1817 in the discharge of their general duties, 1504.

Tehsildars.

Powers of darogah may be vested in any tehsildar in the western provinces, 1505—in such case all the police officers are under his control, *id.*—and the darogahs are to be designated naib darogahs, the thanas being considered as outposts, 1506.
Darogah and tehsildar may modify the rules regarding rank and functions; but in all other respects Reg. XX. 1817 is to be held applicable to them, 1507.
In such cases tehsildars may employ persons on their fixed tehsildaree establishments in matters of police; but police officers are not to be employed in revenue matters, 1508.
Details of such arrangements to be drawn out in English and the vernacular, and suspended in the cutcherry of the magistrate and collector, and proclaimed throughout the district, 1509.
In such cases all reductions which can be effected are to be reported, and the office of naib darogah falling vacant is not to be filled up, 1510.

Outposts.

Magistrate may station any portion of a police thana establishment (not exceeding one-third) at any outpost, reporting particulars to the superintendent of police, 1511.
Duties of officers so stationed, 1512
Such officers may apprehend, without a written charge or warrant, persons found in the act of committing a breach of the peace, or against whom a hue and cry has been raised, or detected with stolen goods, or notorious robbers or vagrants, 1513—in other cases warrant is required, *id.*—persons so arrested are to be forwarded immediately to the thana with an explanation of the circumstances, 1514.
Landholders are not obliged to provide houses for such outposts, 1515.

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Annual report to be made regarding, 1516.

Relative rank and general functions.

Darogah to exercise a general control over the subordinate thana officers, 1517—to conform to the instructions of the magistrate; to preserve the peace, to report all occurrences, to prevent the commission of offences, to discover and apprehend offenders, to execute process and obey orders of magistrate, and to perform other services prescribed in the regulations, *id.*
Mohurrir the second officer, and to act for darogah in his absence, 1518—his special duty is to preserve the records and write the reports, *id.*
Jemadar the third officer, and to act for darogah if both darogah and mohurrir are absent, 1519—special duty to see that the burkundazes are at their posts, that their arms are in an efficient state, and to guard all prisoners and property, *id.*
All police officers to aid and support the superintendents of police and the joint and assistant magistrates, and to furnish them with every information required, 1520, 554.
Unless an order of government places any part of the police under the immediate control of a joint-magistrate, all police officers in the jurisdiction of a joint-magistrate are under the control of the magistrate, 555—but exclusive control has been given to the joint-magistrates, 556.

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Relative rank and general functions.—Continued.

Seal to be used by police officers, 1521.
Burkundazes to wear brass badges engraved with the name of the thana and district, to wear certain arms, and an uniform dress, 1522.

Concurrent jurisdiction.

Intelligence of heinous crimes, the perpetrators of which have not been apprehended, to be sent to neighbouring thanas, 1523.
Police officers may pursue offenders into other thanas or zillahs, and all officers and persons having authority are required to assist them, 1524—in such cases they are not allowed travelling charges, except on extraordinary occasions, 1575.
But this concurrent authority is to be exercised by a police officer only when the offence was committed in his own jurisdiction, or when the offender is therein at the time the charge is preferred, 1525.
If a complainant prefers a written application to a darogah who has no jurisdiction, the particulars of the charge are to be noted in the police diary, and the cause of rejection endorsed on the application, which is to be returned, *id.*
When a darogah apprehends offenders in another zillah, he is to give to the darogah of the jurisdiction a list of their names with the crimes charged, 1526.

Appointment and removal.

Superintendent of police to keep a general register of all police establishments, 1527—and to submit to government annually a comparative abstract statement of the strength and expense of all descriptions of police for the two past years, explaining increase, and suggesting reductions, 1528—magistrate to furnish him with the required information and to conform to his suggestions, 1529.
The power of appointing police officers, of removing them from one station to another, of suspending and dismissing them, is vested in the magistrate, subject to the control of the superintendent of police, 1530—whose decision is final, unless government interferes, *id.*—this provision is applicable to the whole of the N. W. Provinces, 1531.
Magistrate to record the grounds for the removal of any native officer, 1532.
Fit persons to be selected to fill all vacancies, *id.*
Persons appointed, whether by themselves or their predecessors, to be retained in office while they perform their duties with diligence and integrity, *id.*
Security to be taken from darogahs, 1533—but not in the lower provinces, 1534.
Persons past the prime of life not to be admitted into the police force, 1535.
Darogahs may not nominate to vacancies without the order of the magistrate, 1536.
Sunnud to be furnished to each officer on appointment, 1537.
In reporting nomination magistrate to note whether the nominee is related to the amlah of his own or of the sessions court, 1538.
Officers are to be appointed only to act until the superintendent of police sanctions the appointment, 1539.
Dismissal of any officer above the grade of burkundaz to be reported to superintendent for confirmation, 1540.
Monthly returns of dismissals and appointments to be made to superintendent in addition to reports for sanction, 1541.
All deaths, resignations, removals, and appointments in the office of cutwal or darogah to be noted to superintendent in order to prevent the re-employment of persons dismissed for corruption, 1542—if such persons are re-appointed the superintendent is to direct their removal, 1543.
The removal of a police officer, except when dismissed for corruption or other criminal offence declared punishable by dismission, does not preclude his future appointment, 1544

POLICE OFFICERS.—*Continued.*

Appointment and removal.—Continued.

—but magistrate must use great discretion in re-appointing, and must state his reasons for selecting such, 1550*n*.

A session judge holding a jail delivery, or the nizamut adawlut, may order the dismissal of any native officer whose conduct appears from any proceeding before them to require his removal, 1545, 1546.

All native officers are liable to removal without proof of any specific act of criminality, 1547.

Magistrate may fine an officer for neglect of duty in a sum equal to one month's salary, 1548—and is restricted in such cases to such limitation of punishment, 1549—if any distinct misdemeanor is proved beyond neglect of duty, the case falls within his general discretion, *id.*

Dismissal should not be resorted to except for serious offences or repeated misconduct, 1550—register to be kept of minor punishments, which should be reprimands, fines, and suspension not exceeding 6 months, *id.*—if these are unavailing, dismissal must follow, and the papers of the last case with an extract from such register are to be sent to the superintendent, *id.*—the reasons for punishing an officer should always be pointed out to him, *id.*

Rewards to be given only in particular instances of courage, vigilance, or tact; and report to be made before they are given, 1551.

Register to be kept by magistrate of police officers deserving of promotion; and copies of every entry therein to be sent to superintendent, 1552.

Superintendent of police has the same power as a magistrate to fine police officers, 1553—and to suspend them, 1554—such sentences to be certified to the magistrate for execution, 1555—he is competent to remove of his own accord any officer whom he can remove on reference from the magistrate, 1556.

Appeals from orders of magistrate convicting police officers of criminal offences lie to the session judge; and police officers committed to the sessions are to be tried by him, 1557.

Appeals from awards of magistrates against police officers for breach of duty lie to the superintendent of police, 1557—and cannot be heard by the session judge, unless such award is part of a sentence passed in a criminal trial, 1558.

All officers may appeal without reference to the amount of their salary, 1559.

The session judge cannot interfere with the orders of a magistrate regarding the appointment, removal, or suspension of a police officer, 1560—nor are the orders of the superintendent of police in such matters open to revision by the nizamut adawlut, 1561.

Appeals from officers employed in both the revenue and police departments lie to the commissioner, 1562.

Appeals may be forwarded to superintendent by dawk if written on stampt paper, 1563—or may be presented to the magistrate, who is to forward the appeal with the papers of the case, if written on the proper stamp and presented within the proper period, 1564—if not presented within the proper period, the magistrate is not to receive it, 1564—if the appeal is forwarded by dawk, it must be accompanied by copies of the proceedings appealed against, 1565.

Police officers guilty of corruption, extortion, or oppression, may be prosecuted in the civil or criminal court at the option of the party injured, 1566—in such cases the magistrate may require the prosecutor to give security for his attendance, 1567.

Darogah, mohurrir, or jemadar, applying for leave of absence, is to name an individual to officiate, 1568—persons acting to receive the full salary or such portion as the magistrate fixes, *id.*

If darogah is suspended, the acting darogah is to receive the full salary, 1569—what arrangement to be made, if the darogah of one thana is also put in temporary charge of another during the suspension of the darogah of the latter, 1570. 1570.a.

POLICE OFFICERS.—*Continued.*

Appointment and removal.—Continued.

If suspended darogah is acquitted of the charge against him, the magistrate or sessions court is to report to government whether the darogah is entitled to the whole or any part of the salary suspended, 1569.

Extra expenses occasioned by delay to obey the orders for the restoration of a suspended officer, are to be recovered from the person by whose fault the delay occurred, 1571.

Police officers are not to be arrested while in the execution of their duty, 1572—civil process for the apprehension, or personal attendance of police officers, are to be issued through the magistrate, 1573.

Proceeds of property of deceased police officers may be remitted by collectorate drafts, 1574.

Darogahs deputed to make local enquiries in distant thanas may be allowed travelling charges, 1575 but this does not apply to the pursuit of offenders into other thanas, except on extraordinary occasions, *id.*

Great caution to be observed in the deputation of darogahs to other thanas, 1575.

See also NATIVE MINISTERIAL OFFICERS.

Deputation of burkundazes to sudder station.

When a burkundaz is despatched to magistrate's court, he is to be furnished with a certificate showing his name and the date and time of his despatch, 1576.

The nazir is to enter on the same paper the date and hour of his arrival; and to report unnecessary delay to magistrate, 1577.

On leaving the station the nazir is again to note on the same paper the date and time of his departure; and this certificate is to be delivered at the thana to the darogah, mohurrir, or jemadar, who will report to the magistrate any unnecessary delay, 1578.

Police officers bringing in defendants and witnesses are not to be allowed to remain in attendance at the cutcherry, 1579.

POLICE OFFICERS—DUTIES.

Records, diaries, and registers to be kept by.

Regulations of government to be bound up and preserved with care, 1647.

Books and registers to be kept up with regularity, 1648.

Darogahs and mohurrirs taking charge, to report on the general state of the thana papers, 1648—and to sign jointly with the officer delivering over charge a list of the records; one copy of the list to be sent to the magistrate, and one kept at the thana, *id.*

Magistrates and assistants occasionally to inspect the records, *id.*—if found defective, or in cases of neglect, darogah and mohurrir punishable by dismission or fine, *id.*

Blank books to be furnished for diaries, each containing 100 pages, signed and numbered by the assistant or the serishtadar, 1649—and timely report to be made for fresh books, 1654—those completed to be kept with records of thana, *id.*

Every occurrence brought to the notice of the police to be entered in the diary, 1650—if nothing is communicated, it is to be so noted, *id.*

Particulars to be entered in diary of persons apprehended, their names, offences, and the dates of arrest and despatch to magistrate, 1651.

Purport of every petition, representation, complaint, or information, to be recorded in diary, 1652.

Penalty for omission to record, or misrepresentation of, any official act or occurrence, *id.*

Books to be kept—1. for copies of reports made to magistrate, 1655—2. for copies of perwannahs and orders received from magistrate, 1656—3. for copies of chalans of prisoners and property, 1657—4. for register of heinous offences, 1658—5. for copies of lists of stolen property, 1659—6. for register of offenders who have broken jail or evaded process, and for whose arrest orders have been received, 1660.

POLICE OFFICERS—DUTIES.—*Continued.*

Records, diaries, and registers to be kept by.—Continued.

List of villages to be kept, showing the names of the proprietors and of the chokeedars, 1661.

Returns, reports, and statements, to be furnished by.

Extracts from diary, and from the abstract register of heinous offences, containing the entries during the month, to be prepared *verbatim*, and sent to the magistrate on or before the 5th of each month, 1662.

List of thana officers entitled to receive pay to be forwarded by a burkundaz and delivered to the treasurer, 1663—the burkundaz will deliver the amount to the darogah, who will distribute it and forward the receipts with his own on a paper to remain with the records of the magistrate's court, *id.*

Rules for preparing abstract monthly statements of heinous offences, 1664—classification of wilful murder and homicide, 1665—malicious wounding or violent corporal injury, 1666—of affrays and riots, assaults and broils, 1667—of burglaries, 1668—of receiving, vending, or concealing, or melting down stolen property, 1669—of arson, excluding accidental fires, 1670—and of suicide, 1671—and at the foot of the statement are to be noted accidental deaths, any considerable mortality, and any extraordinary event which may be brought to the knowledge of the police, Appendix C. No. 14—all heinous offences to be reported in this statement, whether the offenders are apprehended or not; and attempts are to be distinguished from crimes actually perpetrated, 1672.

A copy of the same monthly statement to be sent to the superintendent of police on or before the 5th of the ensuing month, 1673.

Reports and returns to be written in a clear and legible hand, to be dated according to the native era, and signed and sealed, 1674—every paper to be dated, *id.*

All papers to be strung on a thread, and the ends secured with wax; the record is to be made up in a separate envelope, and the name of the thana marked on it, 1675.

A limited time to be fixed for the execution of every process and order, 1676.

Returns to orders to be endorsed as far as possible on the original perwannah; and a copy of the return to be entered in the register, 1677.

If delay in making returns to orders is unavoidable, the cause is to be reported at the expiration of the appointed time, 1678.

Original order or process to be returned to magistrate with the final return, *id.*

Reports to be accurate and concise, without recapitulation of magistrate's orders, 1679.

If the reports are unnecessarily long, the police officer is liable to punishment, 1680.

It is an important part of a police officer's duty to report all important occurrences, 1681, 1736.

Thana reports sent to the superintendent of police to be transmitted direct and not through the magistrate, 1682—serious cases only are to be reported by darogahs to the superintendent, 1683.

Irregular practices.

No police officer of any grade is to trade or to keep a warehouse or shop within the limits of the thana, 1697.

Police officers not to rent lands from the zumeendars of the district on pain of dismissal, 1698.

Darogahs not to employ burkundazes on their private affairs, 1699—nor village watchmen, 1641.

Any police officer receiving pay from government demanding or receiving any diet money or other allowance or gratuity, while serving a criminal process, is punishable as for a criminal offence; and may be compelled on a criminal or civil prosecution to refund the amount, besides immediate dismission from office, 1700.

POLICE OFFICERS—DUTIES.—*Continued.*

Irregular practices.—Continued.

Darogahs and their followers are not to be entertained in the villages which they visit, 1701.

Landholders are not to be allowed to keep established vakeels at the thanas, but may occasionally employ a mokhtar for a specific purpose, 1702.

Police officers are not to employ mokhtars at the magistrate's office for any purpose connected with their public functions, except with the magistrate's permission, 1703.

Not to employ extra mohurrirs, without permission, except in special cases, 1704.

Not to employ professional goindahs; and to apprehend persons who give out that they are employed as spies by the magistrate or the superintendent of police, unless they have a written authority, 1705—but they may employ persons occasionally to trace out offenders, and should encourage them to give information by which known criminals may be apprehended, *id.*

Not to allow the registration before themselves of girls kept for the purposes of prostitution; nor permit any list of such girls to be delivered to, or the girls to be brought before them on pain of immediate dismission, 1706.

Female relations or connections of persons accused of offences, are not to be apprehended or detained in custody on insufficient grounds, 1707.

Not to interfere in regard to the transfer of cattle and other goods bought and sold, 1708.

Not to levy fines on account of cattle trespassing, 1709.

Not to compel *dagees* and *tekorahs* to sleep under the surveillance of the police or zumeendars, 1710.

Not to admit compromises or razeenamahs in any case, 1058—except to a certain degree in cases of theft or burglary, 1727, 1728.

Offences committed by.

Neglect in the care of records; dismission or fine, 1648.

Neglect of duty; fine of one month's pay in addition to punishment for specific crime or misdemeanor, 1548, 1549.

Neglect in case of prisoner escaping; dismissal, 2141—in case of connivance or further criminality; discretionary punishment, *id.*, 2143.

Wilful omission or misrepresentation of official acts or occurrences in the diary; dismissal or a less penalty, 1652.

Wilful abuse and perversion of their powers of arrest; dismissal and exemplary punishment, 1112.

Maltreatment inflicted on a prisoner or witness to extort confession or to procure information; exemplary punishment, 1777.

Using the stocks, except at night, and then only in cases of robbery and murder, or previous escape, or notorious character; dismissal, 1784.

Any ill-treatment of, or unnecessary severity to, prisoners, 1786.

Detaining prisoners at the thana more than 48 hours; immediate dismission, 1792.

Corruption, extortion, or oppression; liable to criminal or civil prosecution, 1566. See CORRUPTION.

Allowing a criminal charge to be settled by private adjustment, 1058, 3232.

Not giving immediate information of the illicit cultivation of the poppy, 2528—or conniving at it; dismission, and fine or imprisonment, 2530, 2531—not suppressing the illegal manufacture of opium; dismissal, and fine, 2533—conniving at the illicit sale, purchase, importation, transportation, or possession of opium, or neglecting to give information; dismissal, and fine or imprisonment, 2534—conniving at unlicensed shops for sale of spirits, &c.; dismission, and fine or imprisonment, 2537.

Neglecting to give information of, or conniving at the illicit manufacture of salt, 2560—or the illicit sale, purchase, importation, transportation, or possession of salt; dismission, and fine or imprisonment, 2562—attaching or seizing salt without due authority, 2570—or seizing or detaining

POLICE OFFICERS—DUTIES.—*Continued.*

Offences committed by.—Continued.

salt accompanied by a regular rowannah, chalan, charchitty, or special pass; dismission, and prosecution for damages in the civil court, 2582—receiving notice to attend at a seizure of salt, and not attending or refusing to act, or in any way wilfully frustrating the object of the search and seizure; dismission, and fine or imprisonment, 2575.

Convicted of robbery with open violence, whether as principal or accomplice, the sentence which would have been passed on any other person may be enhanced in his case to death or transportation for life, 3060—connivance on the part of such officer subjects to the same penalty as an accomplice, *id.*—going forth with a gang to commit robbery, 3062.

Convicted of theft or larceny without open violence, 3125—or burglary, 3138.

Charges not cognizable by.

Prohibited from taking cognizance of charges of adultery, fornication, calumny, abusive language, slight trespass, or inconsiderable assault, 1711.

Not to investigate charges of abortion, or of procuring it, unless death ensues, 1712—although the enquiry originate in the discovery of the body of a murdered infant, 1713.

May entertain charge of rape, 1714.

Prohibited from making enquiries into the circumstances of fires, unless charge of arson is preferred, 1715.

Not to interfere in petty offences, in any way not positively required by the regulations, 1716.

Persons preferring such petty charges to be referred to the magistrate; but particulars of the charge to be noted in the diary, 1717—the date and ground of rejection to be endorsed on the written plaint to be returned to the complainant, *id.*

Not to admit compromises in any cases, or interfere in any way not provided for in the regulations, or to inflict punishment or make any exaction, 1718.

Not to suffer accusations of heinous offence, to be settled by private adjustment, 1719.

Charges cognizable by.

On receipt of charge of heinous offence, the statement of the prosecutor or informer to be certified on oath, and witnesses to be examined without oath, 1720.

Charges not to be received unless attested on solemn affirmation, 1721.

All cases must be investigated which are not excepted from the cognizance of the police, 1722.

Not to investigate cases of burglary and theft, unattended with personal violence, without petition on unstamped paper requesting that a search may be made for the property or that the offenders may be brought to punishment, or unless the magistrate expressly orders it, 1723—the deposition of the plaintiff is not sufficient; he must present a written petition containing a specific request for the search or the apprehension of the offenders, 1724—without such petition or the order of the magistrate the trial is illegal, 1724*a*—the magistrate should order enquiries only in aggravated cases or where the offence is frequent, 1724*b*.

The suffering parties need not report to the police unaggravated cases of burglary or theft, unless he is a zumeendar, 1725.

Chokeedars are bound to report all such cases to the police 1726—and police officers are bound to report them to magistrate, 1769.

Magistrate to make use of other sources of information than his police officers to discover crimes, 1726.

Police officers may postpone apprehending, pending the magistrate's orders, persons charged with theft or burglary without personal violence, if the suffering parties express a desire that the offenders be not apprehended, and provided that the offenders have not been previously guilty or suspected of theft or robbery, 1727—every such case is immediately to be reported to the magistrate, who is to decide whether it is to be investigated, 1728.

POLICE OFFICERS—DUTIES.—*Continued.*

Charges cognizable by.—Continued.

Magistrate may always direct enquiry to be made though the injured party has not made a written application, 1729.

Discretion of magistrate to be governed by extenuating circumstances, as the youth, distress, or previous character of the offender, or the honor of the family, 1730.

The evidence of witnesses not to be recorded in detail, but the substance reduced to the form of a sooruthal to be signed by those present and sent to the magistrate, 1731—hearsay evidence to be distinguished from that of eye-witnesses, *id*

Depositions of the informant and plaintiff to be taken at length, recording what they saw, what they learnt, from whom they learnt it, names of witnesses, and what they know, 1732—list of stolen property to be given at the same time, and these papers to be sent to the magistrate within 12 hours, *id.*

Sooruthals to be sent to the magistrate in place of a report the moment they are drawn up, 1733.

Form of report with summary of depositions of witnesses, and a list of those whose evidence is unimportant, 1734.

Grounds for sending in prisoners to be noted without recapitulation of evidence in the chalan, 1735.

Magistrates to be careful that the police officers do not neglect these rules for abridging their proceedings; and session judges to point out instances of neglect, 1735*a*.

These rules obviate all excuses for delay; and any detention of prisoners or slowness of enquiry will be severely dealt with, 1736.

Important part of their duty to report concisely, but clearly, all important occurrences, 1736, 1681—magistrates and session judges to notice any neglect of these rules for abridging the written proceedings, 1736*a*.

In cases not proved, the darogah is to send in the substance of the evidence of each witness, the statements of the plaintiff and defendant, the latter taken at length, and a clear statement of the grounds of his opinion, 1737.

Sketch of the spot to be prepared in cases of violent crime, 1738.

Exact date and hour of occurrence to be carefully noted; and the date recorded in the era current in the district, *id.*

Witnesses not to be sworn to the truth of their depositions, unless in a case in which it is expressly sanctioned by the regulations, 1739.

Inquiry to be completed if possible in the first instance, and all attainable evidence to be collected, and the attendance of witnesses secured so as to prevent delay, 1740.

When the offenders are unknown, or have not been apprehended, the report of the enquiry is to be transmitted to the magistrate; but witnesses are not to be sent in without his orders, 1741.

If the offender has absconded, a description of his person is to be recorded with his name and that of his father, and his usual place of residence, 1742.

If more than one offence is charged to one defendant, a separate report of each case is to be sent, 1743.

So, if zumeendar, chokeedar, or others, are guilty of neglect of duty, *id.*

When a defendant sent in has been formerly apprehended by the police, the fact with particulars to be noted in the report, 1744.

When darogah leaves the thana, he is to note the dates and times of his departure, and of his arrival at his destination, and of his return to the thana, 1745—darogah may leave his thana without permission, 1746—but while absent from his thana he is to forward daily to the magistrate a memorandum of his proceedings in the most concise form, 1747.

All dates to be noted in the era current in the district, 1745.

On proceeding to investigate a serious case, he is to send information to the superintendent of police; and on closing

POLICE OFFICERS—DUTIES.—*Continued.*

Charges cognizable by.—Continued.

the case, he is to report the result, 1748—but this only in serious cases, as murders, dacoities, affrays, highway robberies, and heavy burglaries and thefts, 1683—such reports to be sent direct, and not through the magistrate, 1682.

Magistrate to keep a strict watch over the proceedings of his subordinates, that he may be able to give the superintendent any information for which he calls, 1748.

Orders for second investigations should not be accompanied with a threat, 1749—to order investigation after investigation, and to punish the darogahs for want of success, destroys the credibility of the evidence however true, 1749.

Inquests.

In cases of murder, unnatural or suspicious death, or violent and dangerous wounding, the darogah on receiving information is to proceed to the spot in person, or to depute a proper officer, 1750.

Private enquiries as to the circumstances of the case to be made before holding the public inquest, 1751.

Person dangerously wounded, if able to speak, to be examined on solemn affirmation as to the persons by whom he was wounded, the witnesses, and the general circumstances, 1752.

The body of the deceased or wounded person to be examined, and all particulars regarding the wounds or other corporal injuries to be recorded in the sooruthal, 1753—but the practice of probing wounds in order to ascertain their size is prohibited, 1753*a*.

To describe particularly the place in which the body of the deceased or wounded person was found; to report whether the crime appears to have been committed on that spot; and whether it appears from the circumstances under which the body is found that the deceased met his death by his own hands, or by misadventure, or whether any and what grounds exist for believing that the deceased has been killed by others; also to ascertain the name of the wounded or deceased person, 1754.

If the deceased is a stranger, to ascertain where he was last seen, or where he slept the night before, 1755.

If the offenders are unknown, to ascertain whether any person bore enmity to the deceased or wounded person; the particulars of such enmity; when he was last seen in their company; and whether any angry expressions were used, 1756.

If the unknown offender is supposed to have been wounded, enquiries to be made from the village hujjams, washermen, &c., 1756.

The above enquiry to be committed to writing in the presence of creditable residents on the spot, and signed by them, and sent to the magistrate, 1757—immediately in place of a report, 1758.

In cases of murder the weapon or instrument is to be secured for production on the trial, 1759.

Assistance to be procured for wounded person, who is not to be moved until he is able to travel without risk, 1760.

Police officers to explain to the inhabitants that they should not remove persons seriously wounded to the thana, but give immediate notice of the occurrence, *id.*

In cases of murder by poison or doubtful death, the body of the deceased is to be forwarded to the magistrate in the most decent and expeditious manner possible, 1761.

If the timely attendance of the police officers cannot be obtained, the principal persons of the village are to hold the inquest, and forward the report to the magistrate either through the police or otherwise, 1762.

Magistrate sending bodies to civil surgeon for examination are to furnish him with all available information regarding the alleged cause of death, 2867.

Inquiries in heinous offences.

In cases of dacoity or other heinous crime, the darogah is to proceed in person to the spot without delay, transmitting

POLICE OFFICERS—DUTIES.—*Continued.*

Inquiries in heinous offences.—Continued.

a report of the occurrence and of his departure to the magistrate, 1763.

If unable to proceed in person, or if the offence is not heinous, he may depute one of his subordinates to ascertain the facts and procure information for the discovery and apprehension of the offenders, *id.*

Notice of heinous offences to be sent direct to the superintendent of police and not through the magistrate, 1764—see above, *Charges cognizable.*

To ascertain and record the time of the occurrence, the names and descriptions of persons recognized and by whom recognized, and the names and descriptions of persons suspected with the grounds of suspicion; also, a full recital of the occurrences; a list of the articles plundered; the direction in which the robbers fled; whether they had torches and arms, and used disguise; whether anything belonging to the robbers was picked up and recognized; whether any number of persons were known to have assembled previously at a liquor shop, fakeer's muth, or other place, and, what kind of persons; what steps were pursued by the landholders, &c. after the occurrence; what was the conduct of the chokeedars; whether there are any persons of notorious bad character in the neighbourhood, and where they were at the time of the occurrence, 1765.

Such inquiries to be written in the form of a sooruthal in the presence of three or more respectable residents, and signed by them, and forwarded to the magistrate, 1766—immediately in place of a report, 1767.

To caution persons present at the enquiry against suppressing evidence in the first instance, 1768.

Persons present at the commission of the offence to be encouraged to give evidence, and precautions of secrecy observed if they are deterred by fear, *id.*

Every instance of burglary and theft, and of attempts, to be reported, 1769.

In cases of burglary, to attend to foregoing instructions as far as applicable; to report the time of the occurrence; the means of effecting an entry, and the size of the aperture; and whether the house is a place of residence or used for the custody of property, 1770.

To require the chokeedars, landholders, and inhabitants of the place, to state whether they suspect any and what persons and the grounds of their suspicion; and to ascertain how far the suspicions are well founded, and where such persons were at the time of the occurrence, 1771.

Confessions and treatment of prisoners.

Examinations of all prisoners to be taken without oath in the presence of three or more creditable witnesses, who are to attest it, 1772—the prisoner is to be examined as to all the circumstances, the persons concerned, and the disposal of the property, *id.*

If the prisoner makes a confession, it is to be written down in the language which he understands best, in the presence of three or more witnesses who can sign their names, and are not connected with the police; or respectable residents who are to affix their mark, *id.*, 1774.

The prisoner and witnesses are to be allowed to read the confession when written; or, if unable to read, the police officer is to read it over; before it is signed and attested, 1772.

The week, date, hour, and place, at which it is taken, are to be noted at the foot of the paper, *id.*

The original is to be transmitted, signed by the police officer and the writer, *id.*—confessions to be certified in a particular form, 1773.

Confessions to be taken at length, 1775.

No chokeedars, dosadhs, or chumars, or other such descriptions, are to be made witnesses; they must be respectable men, and should be required to question the prisoners themselves, *id.*

POLICE OFFICERS—DUTIES.—*Continued.*

Confessions and treatment of prisoners.—Continued.

Darogah to report if any persons refuse to attend or to attest a confession; and magistrate is competent to award discretionary punishment; but darogah should not summon those whose absence would be attended with serious inconvenience, 1776.

No compulsion to be used to parties or witnesses to obtain information; and holding out fears or hopes, or any species of maltreatment, to induce confessions, is strictly prohibited on pain of exemplary punishment, 1777.

When confessions are taken at night or in any other place than the thana, the special reason is to be noted, 1778—but this does not forbid a private verbal examination, 1779.

A second examination may be taken down in writing; and they cannot refuse to record any declaration or confession which the prisoner wishes to make, 1780.

Prisoners confessing to be kept separate and forwarded under a separate guard, 1781.

Witnesses to confessions always to be bound over to attend, 1782.

Prisoners while detained at thana to be kept in a room which is not exposed to the open air, 1783.

Stocks may be used during the night to secure robbers or murderers or other persons of dangerous character or disorderly behaviour, or persons who have escaped; but only during the night and for such persons, 1784.

Darogahs may use light hand-cuffs in forwarding heinous criminals, 1785.

Darogahs are strictly accountable for any ill-treatment or unnecessary severity used towards prisoners, 1786.

Burkundazes escorting prisoners are to journey at a rate of not less than 6, or more than 8 coss per diem, 1787—at night, the proprietor or headman of the village is to point out a proper place for securing the prisoners, and the chokeedars are to assist in guarding them, 1788.

If the prisoners cannot support themselves during the journey the darogah may advance diet allowance for their way, charges not exceeding the rate of one anna per diem, reporting for orders, 1789.

On arrival at the station, prisoners are to be delivered to the nazir or other officer appointed, until the report is read by the magistrate, till which time one or more of the thana burkundazes are to remain in attendance to be examined if necessary, 1790.

Prisoners sent from one district to another, or sent into the mofussil by the magistrate for discharge are to be accompanied by an open despatch showing their names and destination; and darogahs are to forward them by police burkundazes from thana to thana; such cases to be noted in diary, 1791.

No prisoners are to be detained by the police longer than is indispensably requisite for the enquiries, and never for more than 48 hours, 1792—chalan to be sent with them and copy given to burkundaz for delivery to the nazir, *id.*—magistrate to notice every infraction of this rule and to hold the police officers strictly accountable, 1793—magistrate may authorize further detention, but only on very strong grounds, 1794.

Police to report apprehension of all persons, whether admitted to bail or otherwise; and no person once apprehended to be discharged except on bail or under the special orders of the magistrate, 1795—especial attention to be paid to this rule in order to prevent extortion on the part of the police, 1796.

Miscellaneous rules.

To report when any individuals entertain any extraordinary number of armed men, or commence building or repairing any fort or gurhee, or collecting any quantity of arms or military stores, 1797.

Encroachments on public roads to be prevented and reported, 1798.

POLICE OFFICERS—DUTIES.—*Continued.*

Miscellaneous rules.—Continued.

To send in any insane persons from whose insanity serious consequences may be apprehended, unless their friends will enter into engagements to adopt proper precautions; in the latter case to report to the magistrate for instructions, 1799.

Judges on circuit to be treated with respect and attention, 1800.

Arrival of Europeans, not in the services, to settle in the district to be reported, 1801—annual statement to be filled up by Europeans, 1802—and forwarded by darogah to magistrate, 1803.

On application of the revenue authorities, to afford assistance for the safe custody and conveyance of treasure; and at night to allow it to be deposited at the thana, 1804.

So, in despatches of treasure by bankers and merchants, 1805.

Not required to endorse salt-rowannahs, &c., 1806.

Cannot call on native officers and soldiers on furlough for their leave of absence certificates, except under orders of magistrate, 1807—but may detain persons suspected of desertion when authorized by magistrate, *id.*

Darogahs to inculcate upon landholders and managers of lands their duties and responsibility in communicating all information which they obtain of the commission of murder, robbery, &c. in their estates; or of the resort of robbers, receivers or venders of stolen property; as well as to afford assistance in the apprehension of persons; and generally to co-operate with and support the police in maintaining the peace, preventing affrays and acts of violence, and apprehending offenders, 1808—darogahs to be furnished with copies of, or extracts from, all regulations regarding such matters, 1809.

Copies of lists sent to landholders with warrants for the apprehension of persons named therein, to be sent to police darogahs, 1871—and police officers are to receive such persons when apprehended and to give an acknowledgment for the same, specifying the names of the prisoners and the date of delivery, 1875—and when applied to for aid to afford every assistance for the due enforcement of the process, 1884—such applications and the measures taken in consequence to be recorded in the diary, *id.*—darogahs to furnish half-yearly reports of the persons named in the lists, whom they have apprehended; or explanations if they have not apprehended any, 1877—and to forward a copy of such return to superintendent of police by dawk, *id.*

POPULATION.

Magistrates prohibited from making enquiries into the resources of his district, population, &c. by means of the police, without the sanction of the superintendent of police, 492.

All accessions to the population by the influx of strangers are to be reported to the magistrate, 2682.

POSSESSION DISPUTED. See DISPOSSESSION, COMPLAINTS OF FORCIBLE.

POST-OFFICE LAWS.

Exclusive right of conveying letters by post for hire is in the government; but licenses may be granted to any persons, 2502.

Person knowingly contravening such right, by conveyance, receipt for conveyance, or delivery, as principal or accessary, liable to fine of 50 rupees for each letter, 2503—sufficient to this offence if the letters are conveyed from place to place for a consideration, 2504.

Merely writing the letter so conveyed does not make the writer an accessary; but he is an accessary who delivers the letter to another to convey by post for hire, 2505.

On the arrival of a vessel at any place where there is a government post office, the commander is to deliver all letters and packets as speedily as possible, either at the post-office, or to an authorized agent, and to get a receipt

POST-OFFICE LAWS.—*Continued.*

for them, 2506—wilful disobedience punishable by fine of 1000 rupees, 2507.
Commander of vessel sailing refusing to receive any letter or packet which he is required to receive by any officer of the post-office, or to sign a receipt, punishable by fine of 1000 rupees, 2508.
Such fines may be levied on conviction before any magistrate or justice of the peace, 2515—but the prosecution must be instituted by the post-office authorities, *id.*—and originate with them, 2516.
Penalty for certifying in writing what is not true in respect of any letter, &c. delivered at any post-office for conveyance by post, fine of 50 rupees, 2509.
Penalty for enclosing in an attested packet of law papers, &c. any writing not necessarily part of the documents which it is stated by the attestation to contain, fine of 50 rupees, 2510—fine cannot be mitigated, 2512.
Penalty for sending newspaper, &c. containing any writing except the direction on the cover, fine of 50 rupees, 2511—fine cannot be mitigated, 2512.
Such fines to be demanded in writing by the post-master; and if not paid to be levied after conviction before a magistrate by distress and sale, or in default of goods to imprisonment for two months, 2513.
Post-master how to proceed if he suspects that any letter or packet lying for delivery contains any contraband article, or writing in contravention of the above rules, 2514.
No public officer can detain mails except a secretary to government acting by order, 2524—post-masters are not to delay the mail at the requisition of any public officer, except the emergency is duly certified, *id.*
No public officer can stop or open mails in transit except under an emergency, to be reported immediately to the nearest post-master, *id.*—any contravention of this rule to be reported to government, 2525.
Dawk runners while in the actual conveyance of mails are not to be apprehended on petty charges of misdemeanor, *id.*

Persons in the employ of the post-office guilty of

Fraudulently appropriating any letter or packet, or its contents, or opening any letter or packet with such intent; imprisonment with labor for 7 years and fine, 2517.
Fraudulently appropriating postage duty; imprisonment with labor for 2 years and fine, 2518.
Fraudulently marking or altering the mark on any letter or packet; imprisonment with labor for 2 years and fine, 2519.
Preparing incorrectly, altering, secreting, or destroying any documents with a fraudulent intention; imprisonment with labor for 2 years and fine, 2520.
Inserting letters in the mail-wallets with a view to defraud government of postage duty; imprisonment with labor for 2 years and fine, 2521.
These provisions are not applicable to European British subjects in the mofussil, 2522.
Case of the agent of a dawk contractor altering the telegraph with a fraudulent intent, 2523.

POSTPONED TRIALS.

Trial may be completed as to some of the prisoners and sentence passed, but postponed as to others, 800.
Trial may be twice postponed on account of the absence of witnesses, 834.
But no necessity to postpone if the evidence of such absent witnesses appears unnecessary, *id.*
Judge may always summon further witnesses, if he considers their evidence necessary, 653.
Judge to record his reasons at large for postponing, with the points on which further evidence is required, and other observations on the credit of witnesses already examined, and other remarks which appear requisite for the information of the judge who concludes the trial, 835.
The cause of postponement to be entered on the proceedings, 836.

POSTPONED TRIALS.—*Continued.*

It is not necessary to postpone a trial on account of the absence of the prosecutor; nor to detain the prisoner until the prosecutor has failed to attend a third sessions, 837.
Judge to use his discretion in postponing trial on account of the absence of prosecutor or witnesses in consideration of the cause of absence or in acquitting the prisoner, *id.*
If only prosecutor is absent the judge should instruct the magistrate to appoint a public prosecutor, *id.*
It is not necessary to postpone a trial, because a witness is confined for refusing to give evidence, 318.
Judge on circuit may direct the removal of a trial with the parties to another station of jail delivery, if he see urgent and special grounds, *id.*
Judge to report to nizamut adawlut, if trial is postponed for more than six months from date of commitment, 838.
At the commencement of the sessions, magistrate to lay before the judge a statement of trials referred back by the nizamut adawlut, and postponed trials; and judge to commence with them, 839—if further enquiry is not complete, he is to call upon the magistrate for explanation; and, in the case of trials referred back by the nizamut adawlut, to forward his explanation to that court, *id.*
Such trials to be commenced first as have arisen at the greatest distance from the sudder station in order to avoid delay in case of postponement, 840.

POWDER.

Penalty for keeping in one place, or in places not exceeding 3 miles in distance from each other, more than 50 pounds of gunpowder without a license, 2612.
See MILITARY STORES.

PRACTICE, RULES OF.

Nizamut adawlut may frame, for the due exercise of the criminal jurisdiction vested in them, 983.
Such rules to be submitted to government; and after approval are of the same force as if enacted by government, *id.*

PRECEPTS.

Of nizamut adawlut. See NIZAMUT ADAWLUT.
When directing the collector to attach lands, the magistrate is to communicate with him by precept, 1226, 1227, 1235, 1236.

PREGNANCY. See ABORTION.

PRESS. See PRINTING PRESSES.

PRESUMPTIVE EVIDENCE.

What degree of, is sufficient for conviction, 416.
Session judge should always require specific futwa as to the nature and degree of, 845.
Futwa of strong presumption is a futwa of conviction, 846.
See EVIDENCE.

PRETENCES.

Obtaining a frank on false, 3206.
See CHEATING.

PREVARICATION.

Distinguished from perjury, 3262.
Not punishable as a contempt of court, *id.*

PRINCIPALS. See ACCESSARIES.

PRINCIPAL SUDDER AMEENS.

Liable to a criminal prosecution (in addition to a civil action) for corruption, extortion, or other misdemeanor; and to fine and imprisonment on conviction before the sessions court, 3218.
But not liable for want of form, or for error in proceedings and judgments, *id.*
Such cases are cognizable in the first instance only by the civil judge, 3219—and no process is to be issued without

PRINCIPAL SUDDER AMEENS.—*Continued.*

his assent, 3218—the prosecution may be conducted by the complainant before the magistrate; or the judge may direct the government vakeel to prosecute; but the judge cannot direct the commitment, 3219.

For foujdaree duties, see LAW OFFICERS AND NATIVE JUDGES.

PRINTING PRESSES.

The printer and publisher of every periodical work containing public news or comments on public news, are to make a declaration in duplicate before the magistrate of the jurisdiction, 2615—as often as the place of printing or publication is changed, a new declaration is necessary, *id.*—so, if the printer or publisher leaves the Company's territories, *id.*

Any breach of these rules is punishable by fine of 5000 rupees, and 2 years' imprisonment, 2616.

The two originals of such declaration are to be signed and sealed by the magistrate; one copy to be retained by him, and one copy to be deposited in the supreme court, 2617.

The original declarations may be inspected on payment of a fee of one rupee; and copy taken on payment of fee of two rupees, *id.*

Attested copy of such declaration to be sufficient proof in any court of the identity of the printer and publisher, 2618.

Any person who has signed such declaration may appear before any magistrate and sign in duplicate a declaration that he has ceased to be printer or publisher, 2619—an original of such declaration to be filed with each original of former declaration, *id.*—originals may be inspected on fee of one rupee, and copy taken for fee of two rupees, *id.*—the latter declaration may be put in evidence in any court to limit the period of the former declaration, *id.*

Printing or publishing any book or paper on which the name of the printer or publisher, and the place of printing and of publication are not legibly printed, punishable by fine of 5000 rupees and imprisonment for 2 years, 2620.

Any person keeping a press for the printing of books and papers without making a particular declaration before the magistrate of the jurisdiction, is punishable by fine of 5000 rupees and imprisonment for 2 years, 2621.

Affirming an untruth in any such declaration is punishable by fine of 5000 rupees and imprisonment for 2 years, 2622.

In all such cases imprisonment must be adjudged in addition to fine; and fine must be levied by distress, or in default of chattels by imprisonment for 6 months, 2623.

PRISON-BREAKING. See JAIL, *escape.*

PRISONERS. See POLICE OFFICERS, *confessions and treatment of prisoners;* EVIDENCE, *rules for examination;* and JAIL, *custody of prisoners under examination,* and *passim.*

PRIVATE RESIDENCE.

Authority to transact public business in, 1347.

PRIVATE SERVANTS.

Not to be employed in the execution of public duties, 3435.

Extorting money on the plea of exerting influence in the decision of cases, 3221

Taking money to procure an official situation, 3222

PRIVATE WATCHMEN.

All persons employing watchmen or guards are required to furnish an annual list to the magistrate, 1630—penalty for neglect, *id.*—rule to be carefully enforced, 1630*a*—fine how to be levied and from whom, 1631.

To assist public chokeedars in patrolling, 1642

PRIVITY.

Explanation of term; and distinction between privity and other acts of criminal participation, 132*a*.

In sentence for, labor is commutable to fine, although the principal in the offence is not allowed such exemption, 932.

See ACCESSARIES AND PRINCIPALS.

PROCEDURE, MODE OF.

In magistrate's court. See COMPLAINTS, and COMMITMENTS.

In sessions court. See SESSIONS.

PROCEEDINGS.

Trials of prisoners upon distinct charges to be kept separate, as far as possible, by magistrate and session judge, 765.

When of two orders passed in one case, one is appealable and the other final, they are to be kept distinct and separate, and recorded in separate proceedings, 494.

Forms of final, on conviction, 264 on acquittal, 265—on commitment, 266.

No intermediate proceedings of length are to be admitted, 263—such orders should be passed in as many words without entering into any detail, *id.*

Left unsigned by judge, 758—by magistrate, 504.

See OFFICE, RULES OF.

PROCESSES.

General rules.

In heinous cases all criminal processes are to be served by public officers receiving wages from government, 1072—such officer demanding or receiving any diet money or other allowance or gratuity is punishable as for a criminal offence; and is also liable to dismission, and to a civil action, *id.*

In petty cases processes are to be served by peons not receiving wages from government, who are to receive tullubana at a fixed rate, 1073—such officers demanding or receiving more than the fixed rate are punishable as above, *id.*

Tullubana to be paid by the person taking out process, but magistrate may order the defendant to re-imburse him, *id.*

See COSTS AND DAMAGES.

Peons so employed to be registered, 1074—nazirs are not to employ any person not so registered in the execution of any official act, 1075.

Such peons to be furnished with an uniform belt, or other badge of office, the cost of which is to be defrayed out of the tullubana, 1076.

Table for regulating the amount of tullubana to be prepared according to the distance of each thana from the sudder station, *id.*—such table to be suspended in the cutcherry for general information, 1077—and no tullubana to be allowed at a higher rate without special order, *id.*

The amount due to be specified on the back of each process; and to be paid before execution of process, the nazir endorsing it with a receipt, 1078.

If two or more processes are served by one peon, the magistrate is to determine the proportion of the fixed rate to be paid by each party, 1079.

The peon is to receive three-fourths, and the nazir one-fourth, after execution of process, 1080.

Nazir may make advances to the peons at his discretion; but presiding officer cannot interfere, 1081

Magistrate to prevent illegal exactions under the name or pretence of tullubana, 1082

In petty cases no process is to be issued for the attendance of witnesses without the deposit of such amount of diet money as is determined by the magistrate, 341, 341*a*.

Officer serving process is not bound to show his warrant unless demanded, 2717.

The issue of a general warrant or other process against the person is illegal, 1083.

No process to be issued on a criminal charge or information from a person known to be a goindah without evidence to the truth of it, 278.

Goindah not to be entrusted with the execution of any criminal process, *id.*

If any prosecutor, or witness, or defendant, for whose attendance process is issued, be absent or has absconded, an engagement is to be taken from the head person of the village to produce him on his return, or to give information at the thana of his arrival, 1084—penalty for deceit or failure in such engagement, 1085.

PROCESSES.—*Continued.*

General rules.—Continued.

A public officer issuing process may personally attend the execution of it, 1086.
The court which issued the process of arrest is alone competent to release the prisoner, 1087.
A defendant in attendance on a criminal court is not liable to arrest under a civil process, 1088—nor one in attendance on a collector's court, *id.*—but the protection lasts only during a reasonable period allowed for going, staying, and returning, *id.*—plaintiffs and witnesses appear to be equally exempt from arrest under such circumstances, 1088*n*.
Civil court cannot require from a magistrate delivery on civil process of the person of a prisoner on the expiration of his imprisonment in the criminal jail, 1089.
Police officers of one zillah may not be arrested in another, while in the execution of their duty, 1090.
Process of joint-magistrate to be issued under his official seal and signature, and executed by his own or the magistrate's officers, 551.
Processes of law officers and native judges to be issued under their own signatures, but under the seal and through the officers of the magistrate, 623.
In cases of complaints made before civil magistrate against residents in military cantonments, he may issue process of mere citation without arrest therein as in any other part of his jurisdiction, 212, 213—but process of arrest must be countersigned by the commanding officer, 213.
Processes for attendance of witnesses before courts martial may be enforced by the magistrate, 225.
Any individual is competent to apprehend persons in the actual commission of public crimes, 1887.
See COMPLAINTS.

Summons.

Of magistrate—to bear his official seal and signature, and to be served by a single peon, or on the general mokhtar of the defendant at the station, 1091.
Must specify the offence, and require the accused to attend in person or by vakeel on a certain day, 1092.
If bail is required, the extent must be specified in the summons, 1093.
Warrant may be issued on neglect of summons, 1094.
Warrant may be issued on failure to serve summons, if due diligence is proved, 1095.
If bail is not required the accused is to give an acknowledgment of the receipt of the summons; or in his absence the head person of the family may give the receipt, 1096.
Magistrate may instruct officer serving summons to receive a razeenamah from the plaintiff as a sufficient return to the process, *id.*
Of police officer—to bear his official seal and signature, and to be served by a single burkundz, or through an accredited agent of the accused on the spot, and willing to receive it, 1097—not to be delivered to complainant to serve on the accused, *id.*
If bail is not required, the burkundaz is to demand only an acknowledgment of the receipt of the process, 1098—if the defendant is absent the summons may be served on the principal person of the family willing to receive it, *id.*
Forms of summons requiring and not requiring bail, 1099.
Warrant may be issued on neglect of summons, 1100.

Warrant.

Of magistrate—to bear his official seal and signature, to specify the crime charged, and to require the officer serving it to apprehend the accused, 1101—to be directed to the nazir, *id.*
If bail may be received, with or without security to keep the peace, the amounts required are to be specified in the warrant, 1102.
Forms of bail-bond and security for keeping the peace, 1103.

PROCESSES.—*Continued.*

Warrant.—Continued.

No warrants may be issued for the apprehension of persons not expressly named therein, 1104—sessions courts to notice inadvertent violations of this rule, *id.*
Session judge cannot prohibit the issue of warrant to apprehend a released convict, or other particular individual, 237.
Of police officer—to bear his seal and signature, 1105—to be served by the jemadar and burkundazes; and the mode of execution to be certified on the back of the process which is to be sent to the magistrate, 1106.
If the darogah apprehends resistance, or if the assistance of the landholder is necessary for the due execution of the process, he is to require it in writing on the face of the warrant, 1107.
Darogahs, mohurrirs, or jemadars of police may apprehend, without a written warrant, persons taken in the act, or against whom a general hue and cry is raised, or detected with stolen goods, 1108.
Dwelling houses are not to be forcibly entered without necessity; but if the police officer has certain information that a person charged with a heinous offence is concealed therein, and such person does not deliver himself up, he may break open all the doors except that of a zenanah, 1109—if he has information that the accused is concealed in the zenanah, he is to ascertain the fact by creditable women, and may then break open the door, giving notice to the women to withdraw, 1110.
The powers vested in the police for the service and execution of process, are equally applicable to all officers entrusted with the execution of the process of a magistrate, 1111.
Police officers wilfully abusing and perverting their powers of arrest are liable to exemplary punishment and dismission, 1112—so, any officer guilty of such acts when executing process of magistrate, 1113.
Magistrates to be careful that the police officers do not make unnecessary arrests, 1114.

Execution of, in the salt and opium departments.

By police officer—in bailable cases process to be sent under a sealed cover to the agent, or head native officer, who is to give or to direct sufficient security to be given, certifying the service of the process on the back of it, and by whom the security is given, or sending the accused to the thana, 1115.
In bailable cases the accused is not to be forced to appear till after the manufacturing season unless it is necessary, 1116.
Summonses on such persons to attend as witnesses are to be served as above, but a recognizance is to be taken in lieu of security, 1117.
Warrants for offences not bailable are to be served upon such persons as upon others; but the police is to give notice to the agent or head officer, after having secured the offender, 1118.
By magistrate—if process, is issued to a salt agent or his assistant, it is to be sent to him in a sealed cover, and to be returned by him in a sealed cover duly endorsed, 1119.
In the case of process issued against persons concerned in the provision of salt under a salt agent, when charged with a bailable offence, the warrant is to be sent in a sealed cover to the agent, and is to require the attendance of the party in person or by vakeel during or after the manufacturing season, and to specify the amount of security required, 1120—the agent may himself or by another person execute such security, his guarantee of the security being sufficient, or he may cause the accused to be conveyed before the court, *id.*—the agent is to appoint persons at the sudder station to execute such securities, and the magistrate may send the process to such persons, *id.*—officer serving the process how to proceed, if it is served in the ordinary form on a person employed in the salt manufacture from the prosecutor failing to specify that the accused is so employed, *id.*

PROCESSES.—*Continued.*

Execution of, in the salt and opium departments.—Continued.

Agent to endorse on the process in what manner it has been served and by whom the security has been executed, 1121.

How to arrest such persons accused of offences not bailable, 1122.

Personal responsibility of agent for the performance of the condition of security for appearance given by himself or his officers, 1123.

Notices to such persons to appear as witnesses to be served as if they were parties; but not to be summoned unnecessarily; and to be detained as short a time as possible, 1124.

Salt agents and their officers may be sued in the civil court for improper application of these rules, 1125

The observance of these rules may be dispensed with on special occasions; but the reasons for the deviation must be recorded, and the special order must be noted in the process, *id.*

To what officers employed in the provision of opium these rules apply, 1126—magistrate to be kept informed of the names and stations of such officers, 1127.

Superintendents of salt chokees to keep the magistrate informed of their situations and of the officers attached to them, 1128.

Process how to be served on officers of salt chokees, when charged with bailable offences, 1129—with offences not bailable, 1130—when summoned as witnesses, 1131—discretion vested in magistrate, to deviate from these rules, 1132.

Execution of, within the limits of the supreme court.

Nizamut adawlut may execute as in other places, 1205—process must be in writing, with an English translation annexed, and signed by a judge of the court, *id.*

Mofussil courts may cause execution by sending a certified copy and English translation of the process to be presented to a judge of the supreme court, who will endorse it and direct it to be executed by the sheriff or a justice of the peace, 1206.

Such copy to be delivered to sheriff, who is to make a memorandum of the date of such delivery, and to execute it (without distinction) as a process of the supreme court, 1207.

Sheriff may be proceeded against in the supreme court for all matters touching the execution, as if the process had issued from the supreme court, 1208.

Persons and property seized or detained under such process to be dealt with as if the process had issued from the supreme court, *id.*

Persons disobeying or obstructing the execution of the process are punishable in the supreme court as if it had issued thence, 1209.

In subpœnas for witnesses, supreme court to be governed by its own rules regarding expenses and other matters, *id.*

Persons seized or detained under such process are to be delivered to the persons specified in the endorsement of the judge, and for that purpose to be conveyed to any place beyond the limits of the supreme court, 1210—but an officer is always to be deputed to receive charge of the person arrested, 1216.

Judge of supreme court may always remit the process for amendment to the authority issuing it, if it appears defective in form, 1211.

In the case of a process for the seizure or detention of any person, the judge of the supreme court may direct that bail be taken; and for this purpose may call for such documents and make such enquiry as he thinks proper, 1212.

Every process to be directed to the justices of the peace, but sent to the Company's attorney by dawk or by a peon, 1213—the Company's attorney is to obtain the judge's endorsement and then to forward it to the police office for execution, *id.*

Money is to be remitted by a bill on the general treasury, *id.*

PROCESSES.—*Continued.*

Execution of, within the limits of the supreme court.—Contd.

Subordinate courts are to submit such processes to their European principal to be forwarded by him, *id.*

Forms, *id.*, 1214, 1214*a*.

The party requiring the witness must be prepared, to pay the expenses fixed by the judge of the supreme court, 1213.

Processes to be drawn up correctly, *id.*

No requisition to be made to the chief magistrate of Calcutta for the execution of process, 1215.

Aid to be given to process of supreme court.

How far a magistrate is bound to assist a sheriff's officer in the execution of a writ of capias; and in the conveyance of the prisoner to Calcutta, 1217.

Civil courts not to interfere with the execution of decrees of supreme court, unless a writ directing execution is issued by that court, 1218.

Magistrates and other public officers are bound to give every assistance to the enforcement of a writ of the supreme court; but they cannot remove tenants having tenures and rights of which they cannot be deprived by a mere change of proprietor, 1219.

A magistrate was held right in not giving forcible aid to expel from possession a party who held under a decree of a competent provincial court; and was directed merely to prevent a breach of the peace, 1220.

Resistance of process.

All persons concerned in resisting legal process, or in attempting to rescue a prisoner, are to be apprehended by the police and forwarded to the magistrate, 1221.

Resistance to service of legal process, although irregularly served, is a misdemeanor, 2718.

The officer serving the process is not bound to exhibit the warrant upon which he acts, if no demand is made for a sight of it; and such omission to produce it will not justify resistance, 2717.

In cases of actual rescue or violent resistance, the darogah may call in the aid of the police of adjacent thanas, 1221.

If resistance to process is charged before a magistrate on oath, he may cause the accused to be apprehended and brought before him, 1222.

If the accused absconds, or cannot be apprehended, a written vernacular proclamation, requiring the accused to appear within a fixed period, not less than a month, is to be publicly read and proclaimed by beat of drum, and affixed in a conspicuous part of the cutcherry, and on the outer door of the house of the accused or on some conspicuous place in his cutcherry, 1222.

When such proclamation is issued through a police darogah, he is, in the presence of two or more creditable witnesses not connected with the police, to cause such proclamation to be publicly read and promulgated by beat of drum, and affixed in the thana, and on the outer door of the party's usual dwelling or some conspicuous place in the village, 1223.

If the offender does not appear on the expiration of the period, the darogah is to certify the mode in which the proclamation was issued with all particulars, and to send witnesses to prove the due publication, 1224.

After expiry of term fixed in proclamation, judgment may be had whether defendant is present or not, 1225.

If the offender is a landholder within the zillah, his lands may be declared forfeited to government, 1226—magistrate to issue precept to collector, who will cause the lands to be attached, *id.*

If the offender is a sudder farmer in the zillah, his lease may be declared cancelled, 1227—the magistrate to issue precept to collector, who will cause the lands to be attached, *id.*

If the offender is a landholder or sudder farmer in any other zillah, the same provisions apply, 1228.

Such orders are not to be considered final and conclusive until confirmed by the nizamut adawlut, to whom a copy of the proceedings is to be immediately sent, 1229.

PROCESSES.—*Continued.*

Resistance of process.—Continued.

The nizamut adawlut may commute the forfeiture of the lands to a fine, or confirm the judgment of the magistrate, 1230—in the latter case the proceedings are to be forwarded to government for final order, *id.*—if government confirms the forfeiture, notice is to be sent to the collector, *id.*—if the judgment of forfeiture is set aside, the magistrate is to require the collector by precept to remove the attachment, *id.*

If the offender is not a landholder or sudder farmer, he is to be adjudged to pay a fine; and the magistrate may immediately attach his property under the rules for the execution of a decree of a civil court, 1231—if the prisoner is apprehended, such fine on failure of property may be commuted to imprisonment, *id.*

In minor cases the magistrate may, if he judges it sufficient, pass the same sentence as in other petty offences without reference to the nizamut adawlut, 1232.

In all cases the magistrate may, if he judges it sufficient, pass sentence of fine of 200 rupees, commutable to 6 months' imprisonment, in lieu of forfeiture, without reference to the nizamut adawlut, but subject to appeal, 1233.

The police officer serving the warrant may immediately attach the moveable property of persons who have resisted process, and are not landholders or sudder farmers, if its removal unless attached may be expected, 1241—the magistrate is to issue orders for releasing the property or continuing the attachment; and until the receipt of such instructions the police are only to prevent a removal of the property, 1242—inventory of articles attached to be taken in the presence of witnesses and attested; and the property is to be put in charge of some of the respectable inhabitants who are to give an acknowledgment for the same, 1243—such property is to be carefully preserved; and a full account rendered on the removal of the attachment, 1244—if the proclaimed person does not appear within the fixed period, such property may be sold to make good any fine imposed upon him, 1245.

Bail is admissible on a charge of resistance of process, unless the defendant is also accused of some aggravating crime, 1247.

Persons charged with resistance may appear by vakeel, 1248.

When a process issued by a court in one zillah, and backed by the court of another, is resisted, it is considered resistance of the process of that court within whose jurisdiction it took place, 1249.

Resistance is not punishable as an affray, 1250.

Resistance of process, or resisting the police, does not amount to rebellion, 2700.

Case of simple resistance cannot be committed to the sessions, 1252.

Precedents of cases, 1253, 1254.

If a landholder or other person entrusted with a warrant for the apprehension of a person who has absconded, applies to the police for co-operation and support, every possible aid is to be given; and report to be made to magistrate, 1256—resistance to such process is punishable as resistance to process of magistrate, 1879. See LANDHOLDERS, *duties in the apprehension of offenders.*

If police officers executing warrant for the apprehension of a person charged with a heinous crime, or pursuing a robber or murderer immediately after the commission of the crime, or resisting him in his attempt to commit crime, wound or slay such person, they are to be held guiltless, 1257.

Of superintendent of police, punishable under the above rules, 1461—so, of joint-magistrate, 551.

So, of the collector of tolls, supervisor of rivers, or their officers, 2469. See LOCAL NUISANCES, *rivers.*

Of civil court:—judge should dispose himself of common cases, 1258—making over cases attended with a breach of the peace to the magistrate, but without passing any opinion, *id.*—the appeal from the magistrate's order will lie to himself as session judge, *id.*—resistance to persons legally authorized to distrain is a criminal act, although the distress is irregularly levied, 1259—case of affray in resisting a fraudulent distraint, 1260—magistrate cannot authorize the police to break open a house and arrest a person forcibly rescued from civil process, 1261—civil judge cannot call upon the magistrate to enforce his orders, 1262. See DISTRAINT AND ATTACHMENT.

Of collector:—police officers are to aid and support the execution of all process and orders issued by a collector engaged in making or revising a settlement, on his responsibility; and revenue officers are to be held guiltless if an affray or breach of the peace ensues from resistance being made to such process, 1263—but collector cannot issue orders direct to the police officers except in emergent cases; in ordinary cases he is to communicate his apprehensions of resistance to the darogah who is responsible, 1264—police cannot issue process on the mere requisition of a collectorate ameen, 1265—collector may try all cases of resistance to his process unless where actual breaches of the peace occur, in which event the case must be tried by the magistrate, 1266. See DISTRAINT AND ATTACHMENT.

Evasion of process.

If any person charged with a criminal offence evades process by absconding or concealing himself, the magistrate is to cause a written proclamation, requiring him to appear within a fixed period not less than one month, to be published by beat of drum, and to be affixed in some part of his cutcherry, and on the outer door of his usual dwelling or some conspicuous place in the village, 1234.

When such proclamation is issued through a police darogah, he is, in the presence of creditable witnesses unconnected with the police, to cause such proclamation to be publicly read and promulgated by beat of drum, and to be affixed in the thana, and on the outer door of the party's usual dwelling, or in some conspicuous place in the village, 1223.

If the party does not appear at the expiration of the period, the darogah is to certify the mode in which the proclamation was issued with all particulars, and to send witnesses to prove the due publication, 1224—and the magistrate is then to order the attachment of any land or other real property held by him in the following manner, 1234.

If the absentee is a landholder or sudder farmer, the magistrate is to issue a precept to the collector to attach the land; and the collector is to comply with such requisition subject to the instructions of the commissioner of revenue, to whom he is to make an immediate report, 1235.

So, if he is in any capacity the tenant of landed property capable of attachment, 1236.

So, if he possesses land or other immoveable property, or a sudder farm, in any other zillah, 1237.

In all such cases the attachment is to be removed on the attendance of the absentee; and a full and fair account rendered of all receipts and disbursements, 1238—the attachment cannot be continued after his appearance, if he appears within 6 months, 1239.

If the absentee does not attend within 6 months, the magistrate is to report to government for the future disposal of the lands, 1240.

The police officer serving the warrant may immediately attach the moveable property of persons evading process, when there is reason to expect that it will be removed if not attached, 1241—report of such attachment is to be forwarded to the magistrate, *id.*—who will issue orders for the release of the property or the continuance of the attachment; and until the receipt of such instructions the police are merely to prevent a removal of the property, 1242—an inventory of the articles attached is to be taken in the presence of witnesses and attested; and the property is to

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Evasion of process.—Continued.

be put in charge of some of the respectable inhabitants, who are to give an acknowledgment for the same, 1243—such property is to be carefully preserved by the person in charge, and a full account of it is to be rendered when the attachment is removed on the appearance of the party, 1244—at the end of 6 months, a report is to be made to government for the disposal of the property, 1245.

These provisions are applicable only to persons charged with a crime, but not convicted; they cannot therefore be applied to the case of a person absconding after sentence and pending appeal, 1246.

Evasion of process cannot be punished as a contempt of court; the magistrate must proceed under the above rules, 1251.

Evasion of process does not bar the right of appeal; and the appellate court may suspend execution of the magistrate's sentence pending the appeal, 1303.

Register to be kept up of persons absconded, 1255.

See LANDHOLDERS, *duties in the apprehension of absconded offenders.*

Bail, and recognizances for appearance. See BAIL.

Search for stolen property. See STOLEN PROPERTY.

Distraint and attachment. See DISTRAINT AND ATTACHMENT.

PROCLAMATIONS.

Magistrates are not to address publications of a general nature to the inhabitants of the provinces without the sanction of government; or in cases not admitting of delay without the knowledge and concurrence of the nearest local authority to which they are subject, 491.

So, the superintendent of police is to be furnished with a copy of all general or circular orders which the magistrate wishes to issue to his police; and he may rescind, alter, or modify any such orders, *id.*—but the session judge is not to interfere, *id.*- in more important matters such orders must be submitted to government, *id*

Serious notice will be taken of any breach of these rules, *id.*

PROMISSORY NOTES.

Counterfeiting, or issuing, &c. counterfeit. See COINING.

PROPERTY, INTESTATE OR UNCLAIMED. See UNCLAIMED PROPERTY.

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PROSECUTION.

When the evidence for the prosecution is clearly insufficient to prove the charge against the prisoner, it is unnecessary to take the defence, 786.

PROSECUTOR.

In ordinary cases should attend in person to institute and conduct the prosecution before the magistrate and the sessions court, 709.

But his attendance is not indispensable when substantial reasons can be shown for his non-attendance, 708, 709.

The superior courts are to restrain any ill-judged exercise of the discretion vested in the magistrate to dispense with attendance, 709.

In the sessions court the attendance of the prosecutor is necessary in cases in which the Mahomedan law requires the prosecutor to appear in person, 710—but in cases of murder, wounding, &c. the refusal of the heir, or the person injured to prosecute is no bar to the legality of the trial, 2868, 992.

The judge may always require the attendance of the prosecutor, if his *vivâ voce* evidence is necessary, except in the case of native ladies of rank, 710—but he may always use his discretion in proceeding with the trial during the absence of the prosecutor, or in postponing it, 837. See POSTPONED TRIALS.

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Prosecutors to execute mochulkas before the police officers to appear before the magistrate, 350—on plain paper, 351.

Police officers are prohibited from subjecting prosecutors to any degree of restraint, except when their complaints appear on inquiry to be false and malicious, 352.

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PROSECUTOR, PUBLIC.

The magistrate may direct any person to officiate as government pleader for conducting prosecutions on the part of government, 700.

The magistrate may appoint a public prosecutor in cases of murder, notwithstanding there are near relations of the deceased competent to prosecute, 701—so, in a case of theft where the injured party declines prosecuting, 702.

Where there is no private prosecutor, the government pleader should be ordered to prosecute at the sessions, 703—so, where the prosecutor is an infant, 704—but not in a case of adultery, 3020.

The government may appoint the superintendent of police, or any other officer, not being the committing officer to prosecute at the sessions; but he must be recognized as the prosecutor, or agent of government for conducting the prosecution, and cannot interfere in the trial in any other capacity, 705.

The committing officer cannot conduct the prosecution before the sessions; but his assistant may, 706.

The government prosecutor is not to be required to make oath to the truth of the charge, 707.

PROSTITUTES.

Police officers are prohibited from keeping any register of females retained for the purposes of prostitution, or allowing any list of such girls to be delivered to, or the girls to be brought before them at any place whatever, 1706.

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PUBLIC BUSINESS.

Not to be transacted in private residences, 1347.

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PUBLIC SERVANTS.

Not to be employed in the execution of private business, 3436.

Salary of, may be attached as other property; and the disbursing officer is bound to assist in effecting the attachment, 1982.

PUBLIC WORKS AND PUBLIC PROPERTY.

All public functionaries are required to receive charge of public property, when the officer having custody is unable from any circumstances to retain charge of it, 490.

Magistrates are to take all the means in their power to trace out and punish persons committing malicious injuries on public property, such as the removal of mile-stones, stealth of flag-stones from surface drains, destruction of bridges, and the cutting through of roads and embankments, 2465.

Police darogahs are to prevent all encroachments on the public roads, and to report the circumstances to the magistrate, 1798.

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Magistrates cannot compel landholders to repair the public roads passing through their villages or estates, 1897.

Plans and other documents relating to public works are to be countersigned by civil officers; but such countersignature is not deemed to imply a tacit approbation or confirmation of the statements contained in such documents, 1385—dates of receipt and return of such statements to be noted, *id.*

In the case of delays in the repairs and alterations of public buildings, it is the duty of the magistrate, or other officer to whose department the work belongs, to report the circumstances to government, 1386.

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SALARY.

Of a public servant is liable to attachment as other property, and the disbursing officer must assist, 1982.
Officers are not to be entertained on lower salaries than those fixed by the government for the situations they hold, 1947.
Police officers are not to interfere to procure payment of salaries of village chokeedars, 1644.

SALES.

The execution of two sales of the same estate to different persons was held to be a fraud punishable by the criminal courts, 3204.
To sell by weights and measures short of what is recognized as the current standard of the place or district is a fraud punishable by the magistrate, 3207.

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SALT MOLUNGEES.

Conspiracy to excite discontent among, by false statements, 3252.

SARIKA (larceny). See LAW, MAHOMEDAN.

Sarika-i-kobra, dacoity, 3033.
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Rules under which officers may receive savings from the pay and allowances of their establishments for investment in the government savings' bank, 1455.

SAYER DUTIES.

Native officers employed in the customs making unauthorized collections, are liable to dismissal and to a criminal prosecution, 3223—what punishment may be adjudged, *id.*—liable also to damages in the civil court, *id.*
Native persons not employed in the customs, who exact customs or duties are liable to the same penalties, 3224—except as to corporal punishment, *id.*
Meaning of the term "exact," 3225.
The rules for the abolition of the sayer duties, and these provisions, do not apply to a zumeendar collecting a cess established by custom, and sanctioned by the revenue authorities, 3226—as choongee, 3227.

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Used in opium ware-houses, to be annually examined and sealed by the magistrate or some person appointed by him, 2539.
Used by jail moodies to be inspected by magistrate, 2039.

SEAL.

To be used by cutwals and police darogahs, 1521.
Joint-magistrate to have his own official seal, 551—but the processes of law officers and uncovenanted judges in criminal cases are to be issued under the seal of the magistrate, 623.
The penalties for forgery apply to counterfeit seals used in fraudulent and injurious fabrications or alterations of written deeds or of written or printed papers, 3313—and it is sufficient for a conviction of forgery, that the seal be forged though the paper be blank, 3316—but the mere possession of seals bearing the names of other individuals is not a punishable offence, 3318.

SEALING WAX.

Not to be used for public dispatches; envelopes to be closed with gum-arabic, and the seal of office stamped in lamp-black, 1352.

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Distressed British, rules for relief of, 1456.

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In execution of process of arrest. See PROCESSES, *warrant*.
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For stolen property. See STOLEN PROPERTY.
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But may extend to death only in a case of murder, 849.
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SECURITIES OF PUBLIC OFFICERS.

Security to be taken from treasurers, nazirs, and other officers entrusted with public money or property, 1951.
Sureties to bind themselves to make good all losses by default or fraud, *id.*—and not to sell or alienate the property pledged, *id.*
The amount of security to be regulated by circumstances, *id.*
Sufficiency of security to be tested yearly and report made, *id.*—certificate to be subjoined to the report, 1952.
Responsibility of officers vouching for the sufficiency of securities, 1953.
Such reports to be sent in the lower provinces to the superintendent of police instead of the nizamut adawlut, 1954.
Form of security-bond to be used in the western provinces, 1955.
All security-bonds to be registered; and officers to satisfy themselves that the lands pledged were not previously conveyed away, 1956—fees to be paid by the officer giving security, *id.*
Nazir is liable to damages in a civil suit for wilful misrepresentation of the sufficiency of security, 1957.
Public securities given as security for the due performance of official duties are to be deposited with the sub-treasurer, 1451, 1958—when deposited by heads of offices, to be endorsed to the secretary to government, *id.*—if by subordinate officers, to the official head of their department, *id.*—interest may be drawn periodically on such securities through the sub-treasurer, *id.*—these rules do not apply to securities deposited for revenue or judicial purposes, or for the performance of ordinary contracts for supplies, 1451.
If the collectorate treasurer takes charge of the foujdaree treasury, a clause is to be inserted by the collector in the security-bond extending the responsibility of the sureties, 1959.
Police darogahs on their appointment are to give security, 1533—but this rule has been suspended in the lower provinces, 1534.
The criminal courts are authorized to require mochulkas for good behaviour from their native officers in such sums as they judge proper, 1939.
The nazirs are to enter into a mochulka for the good behaviour of the naibs, mirdahs, and peons, whom they appoint, 1965.

SECURITIES, PUBLIC.

Penalty for forgery of any counterfeit note, or other security for money in imitation of any of the public securities of the British governments, or of the bank notes issued by any public bank, 2477.
Penalty for paying, or tendering in payment, promissory notes or other securities for money, knowing the same to be counterfeit, 2482.
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SECURITY.

For good behaviour, see BAD CHARACTER.
Prisoners detained in default of, for good behaviour. See JAIL, *security prisoners*.

SECURITY.—*Continued.*

To keep the peace, pending trial. See COMPLAINTS, and PROCESSES, *warrants*.
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From brahmins establishing koorhs, 2896.
For attendance, see MOCHULKAS, and BAIL.
May be required from prisoners acquitted at the sessions in consequence of the absence of the prosecutor and witnesses, 837.
Required from individuals taking charge of insane persons, 3129.
For costs, not required in proceedings before the nizamut adawlut, 983.

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SEEND-KATEE.

Persons found with, to be required to give security for good conduct, 3146—for a definite period, 3146*a*.

SELF-DEFENCE, HOMICIDE IN.

In Mahomedan law, justifiable, 2906.
In English law, justifiable, *page* 527*n*.
In regulation law, justifiable, 2879.

SENTENCES BY SESSION JUDGE.

General character and conditions.

Session judge cannot alter his sentence once passed; he must report to the nizamut adawlut, 852—in a case under Act IV. 1840 he cannot be admitted to review his judgment, 2777.
Judge should pass sentence in the most public manner, explaining to the prisoners the enormity of their crimes; and publicly explaining the provisions of recent penal enactments, 853.
Where the regulations prescribe a stated penalty for an offence, the provisions of the Mahomedan law are superseded, 854.
In trials for murder the futwa is to be given according to the doctrines of Yoosuf and Mahomed, 855.
A promise not to prosecute does not bar a capital sentence, 856.
No criminal is to suffer the punishment of mutilation, 857—a futwa for the amputation of two limbs is to be commuted to imprisonment for 14 years; of one limb to imprisonment for 7 years, *id.*
Session judge may always in passing sentence exempt the prisoner from hard labor, 858.
If the session judge recommends imprisonment for life in Allipore jail, he is to record his reasons for not recommending transportation, 859.
Power of session judge to fine is unrestricted except when defined by a specific regulation, 915—but this rule has effect in the *lower provinces* only, 915*a*—imprisonment awarded by a session judge in lieu of fine must be temporary, 913.
If the futwa awards *deyut* in other cases than murder or culpable homicide, the judge is to commute it to imprisonment, 914—if the judge commutes to imprisonment for life, the trial must be referred, *id.*
If the futwa is consonant to natural justice and to law, sentence is to be passed in the terms of the futwa, and the warrant issued without further reference or delay, 860.
But if futwa adjudges death or imprisonment for life, the trial must be referred, *id.*

When trial is referrible, and whether sentence is to be passed or not.

Judge may refer any case in which he considers the sentence within his competence inadequate, 861.
If the judge disapproves of the proceedings, or of the futwa, he is not to pass sentence, but to refer the trial, 862.
A difference of opinion as to the aggravated character of the offence is not a legitimate ground of reference, 863.

SENTENCES BY SESSION JUDGE.—*Continued.*

When trial is referrible, &c.—Continued.

The mere concealment of the body is no ground of reference if the homicide appears justifiable, 863*a*.

Judge may sentence for privity, when the principals have been previously convicted and sentenced by the nizamut adawlut, 864.

Under these rules the trial is referrible, where the prisoner is convicted and is liable to perpetual imprisonment or death; and where the judge disapproves of the futwa and may not pass sentence notwithstanding it, 865.

The judge is not to pass sentence, if he disapprove of the futwa, or if any of the prisoners be liable to death; but to refer, 866.

Judge is to pass sentence if he approve of the futwa, and if none of the prisoners be liable to death; but in referrible trials such sentence is not final, *id.*

If the trial of the principal be referred, the sentence passed upon the accomplices is not to be issued until the final order of the nizamut adawlut be received, *id.*—but accomplices acquitted are to be released at once notwithstanding that the case is referred as to the principal, *id.*

If the session judge refers the trial because he differs from the law officer as to *some* of the prisoners only, he is to pass sentence on the other prisoners, 867 but such sentence is not to be carried into execution until the receipt of the orders of the nizamut adawlut, 868—though it must be passed, 869—in such cases the judge is to point out those parts of the proceedings and evidence which affect the prisoners regarding whom the case is referred; and the nizamut adawlut need only revise such parts of the proceedings as affect them, 867—but may revise the whole, 868.

Trial must be referred if the judge and law officer differ on any other grounds than those especially provided for in the regulations, 870.

All questions of law, unprovided for by the regulations, are to be referred to the law officer, and the judge is to regulate his proceedings by the opinions of such officer, 871—the futwa of the law officer on any point of law may be required although he is not sitting on the trial, 827, 841—if however the opinions of the law officer appear contrary to natural justice, or to Mahomedan law, the judge is to be guided by them, but is to refer the trial without passing sentence, 871.

If the law officer reject the evidence, because the witnesses do not profess the Mahomedan religion, he is to be required to state what his futwa would have been if the witnesses had been Mahomedans; and the trial is to be referred without passing sentence, 872.

If the law officer reject evidence because the witness is a police officer, or on any ground of exception in the Mahomedan rules of evidence which appears unreasonable and insufficient, he is to be required to state to what sentence the prisoner would have been liable if such evidence had been admissible, 873—if the conviction depend exclusively or principally on that evidence, the trial is to be referred without passing sentence, *id.*—as where the principal evidence was that of two women, 874.

If the law officer acquits and the judge convicts, sentence is not to be passed and the trial is to be referred, 875.

If the prisoner is committed on two counts, and the judge convicts only on one, and the law officer only on the other, sentence is not to be passed, and the trial is to be referred, 876.

Examples of trials which must be referred, 877, 878.

Examples of trials which are not necessarily referrible, 879, 880.

Example of trial which cannot be referred, 881.

Discretionary punishment.

When the prisoner is liable to discretionary punishment, the futwa is to declare the grounds of conviction, leaving the measure of punishment to be determined by the judge, 882.

SENTENCES BY SESSION JUDGE.—*Continued.*

Discretionary punishment.—Continued.

If the crime has been specifically provided for by any regulation sentence to be passed or the trial referred, 883.

If the crime has not been provided for by any regulation, but subjects the prisoner to the penalty of *hudd* or *kisas* under the Mahomedan law, and such sentence is barred by a defect in the evidence, 884—or by some special exception or scrupulous distinction, not affecting the nature and criminality of the offence, and evidently repugnant to the principles of equal justice, 885—a second futwa is to be required setting aside such exceptions, 884, 885.

Rule where the specific penalty is remitted or mitigated by the Mahomedan law by circumstances which alter the nature or diminish the criminality of the offence, 886.

No punishment is to be inflicted on suspicion only, or weak presumption of guilt, 887—but on proof of bad character security may be required, *id.*

If the crime has not been specifically provided for by any regulation or by Mahomedan law, the sentence may extend to corporal punishment and imprisonment with labor for 7 years, 888—this admits the award of a fine commutable to imprisonment, 888*a*—if such sentence appears insufficient, the trial is to be referred, 888.

Under a futwa of *hukoomut-i-udl*, the judge may award imprisonment for 7 years, or refer the trial if such sentence appears inadequate, 890—if the futwa is for *tazeer* as well as *hukoomut-i-udl*, corporal punishment may be added, 890*n*.

Conviction of two or more offences.

If the aggregate penalties exceed stripes and imprisonment for 14 years, the judge is to pass consolidated sentence not exceeding stripes and imprisonment in banishment for 14 years, 891—unless such sentence is inadequate, in which case he is to refer the trial, *id.*

The same principle applies if a person under sentence is convicted a second time for an offence committed prior to his first conviction; but not if the second offence is subsequent to the conviction for the first offence, 892.

If the prisoner is liable on the first conviction to the maximum punishment, he need not be tried on any further charge, except when such further charge would subject him to death or imprisonment for life, 894—but judge must report in such case; and nizamut adawlut may order further trial, *id.*

These rules are not affected by regulations prescribing a minimum penalty, 895.

The judge must try a sufficient number of cases to warrant a maximum sentence, 896.

Example of case in which the nizamut adawlut required another charge to be tried, 897.

In such cases the trials are to be kept distinct; and separate futwas taken, on each of which the judge is to record his assent or dissent; each trial to refer to the one last tried, which includes the final order on all the cases, 898.

Mahomedan law for consolidation of sentences, 899.

Precedent, 900.

See LABOR AND IRONS, and JAIL, *warrants for execution of sentence*, and *execution of sentence*.

SEPOYS.

Offences committed by. See MILITARY CANTONMENTS, and MILITARY GUARDS.

Not to wear their uniform while absent from their corps, unless on public service, 1813—persons disobeying this order to be deprived of their dress by military commanding officers and magistrates; unless they are in the military service of the Company, in which case they are to be sent to their corps, 1814—police officers are to apprehend persons wearing military dress, 1814, 1815—or sepoys wearing their uniform while on leave, 1816.

SEPOYS.—*Continued.*

Police officers cannot call upon native officers and soldiers on furlough for their leave of absence certificates except under the immediate instructions of the magistrate, 1807.
Commanding officers may apply to the civil authorities for aid in the apprehension of deserters; and subordinate police officers, when authorized, may detain persons suspected of desertion, *id.*
Military officers marching are forbidden to send sepoys into the villages to procure provisions, or to press bearers, coolies, or boatmen, 1833. See MARCHING.

SERAYS, PUBLIC.

Superintendents of police have a general control over, 2412. See LOCAL IMPROVEMENTS, *public works.*
Persons in charge of the public serays to deliver into the cutwal's office, or to the darogah of the ward, daily reports of the arrival and departure of travellers, and of all persons of suspicious appearance, 1500.

SERVANTS.

Private servants not to be employed in the execution of public duties, 3435—extorting money on the plea of exerting influence in the decision of cases, 3221—taking money to procure an official situation, 3222.
Public servants not to be employed in the performance of private business, 3436—salary of, may be attached as other property; and the disbursing officer is bound to assist in effecting the attachment, 1982.
Of military officers, see MILITARY CANTONMENTS, *police of, and offences committed in.*
Stealing their master's property, 3089. See BADGE.

Quitting service, and suits for wages.

Domestic servants engaged for a fixed term, or a specific service, or employed from month to month, and wilfully quitting the service before the expiration of the term, or before the completion of the stipulated service, or with respect to monthly servants before giving 15 days' notice, liable to imprisonment for one month, 3410.
Magistrate may also compel the completion of the term or the specific service; and a subsequent conviction of neglect is punishable by a further sentence not exceeding two months, 3410—but beyond such further sentence the magistrate can take no measure to compel the performance of the work engaged for, 3411.
But no servant is liable to punishment, if it is proved that his quitting the service was occasioned by gross ill-treatment, or by non-payment of wages due, or other sufficient excuse, 3420.
Cases may be prosecuted in the district in which the agreement was executed, or in that in which the defendant resides, 3412.
If employed for a fixed term, or for a specific service, or from month to month, may not be discharged, against his will, before the expiration of the fixed term, or the completion of the specified service, or with respect to monthly servants without 15 days' notice or paying his wages for that period, 3418.
In such cases the magistrate is to award half a month's wages in addition to all arrears; or in the case of a fixed term or specific service, by payment of due compensation, 3419—but if discharged for proved misconduct, the award is to be for arrears of wages only, 3420.
Complaints for arrears of wages must be made within a year from the cause of action, 3421.
Such complaints must be preferred on oath, *id.*
Any amount of wages not exceeding arrears for one year may be recovered, 3422.
Such awards to be levied by distress and sale of personal property, 3423.
These rules do not apply to a mokhtar, 3413—nor to a gomashtah of an indigo planter superintending an out-factory, 3414.

SERVANTS.—*Continued.*

Quitting service, and suits for wages.—Continued.

Beoparees in the service of government suing for wages are to be referred to the civil court, 3416.
Assistants vested with special powers may dispose of such cases, 3424.
Cases decided by the criminal authorities under these provisions are not open to a civil action; nor can the civil court interfere with the magistrate's order, 3425.
European British subjects may sue under these provisions, but are not liable as defendants, 3426.

SESSION JUDGE.

Appointment, 726.
Oath, 727.

General duties.

Government may transfer to the session judge the duties of the commissioner of circuit, and define their respective powers, 728.
To try the commitments made by the magistrate as soon as convenient, 729—jail-delivery to be held in each district once a month, *id.*
General duties, to try commitments, to dispose of appeals, and to exercise a general superintendence and control over the proceedings of the magistrate, 730.
To propose new rules for the trials of prisoners, the administration of justice, or the police of the country, 735.
To submit annual report on the system of administering the criminal laws, and other matters deserving of notice, 736—comprehending such information of the condition of the district as local experience and observation supplies, 737—copy of such parts of the report as relate to the state of the police to be sent to the superintendent of police, 738.
To furnish the superintendent of police with copies of the statements reporting the number and nature of the offences committed, *id.*
Not warranted in issuing instructions of a general nature for the conduct of the magistrate, 739.

General powers.

The same as those formerly confided to commissioners of circuit, 731—*i. e.* the powers previously exercised by the courts of circuit collectively, 731*n.*
Cannot exercise any authority over the magistrates, or any interference in matters of police, 731. See APPEALS AND REVISION OF SENTENCES.
On conclusion of trial, to pass sentence of conviction or acquittal, or to refer the trial under the rules previously applicable to commissioners of circuit, 732. See SENTENCES BY SESSION JUDGE.
Power to fine is unrestricted, except when defined by a specific regulation, 733—but this rule does not hold in the *western provinces*, 733*a.*
Cannot order a magistrate not to issue process to apprehend a released convict, or other particular individual, 237.
In appealed cases, may exercise the same power as a magistrate in punishing malicious complaints; but cannot punish the prosecutor on such account in cases committed to the sessions, 275.
All fines imposed by the magistrate for the non-attendance of witnesses, or for refusal to give evidence, must be reported to session judge, 312.
May admit prisoners to bail in cases declared not bailable, 1143—may direct the magistrate to reduce the amount of bail, *id.*—in cases committed to the sessions may always admit to bail, 1144—may direct the magistrate to admit prisoners to bail without examining proceedings, 1148—should generally admit to bail through the magistrate, 1150.
General control and superintendence over jails, the persons confined in them, the establishments thereunto belonging, and the places of banishment or transportation of prisoners,

SESSION JUDGE.—*Continued.*

General powers.—Continued.

is vested in the magistrate and session judge under the orders of government, 2014 to visit the jail monthly, 2020 —but cannot issue orders direct to jail officers regarding the management of the jails, 2018.

Believing the chokeedaree assessment to be unequal or defective, may report to government, 1598.

May order the dismissal of any native officer, police or ministerial, whose conduct appears from any proceeding before the sessions court to require his removal, 1545, 1546, 1923.

If in the course of a trial he see reason to impute misconduct to any darogah or other police officer, he may certify the same to the superintendent of police, intimating to the nizamut adawlut that he has done so, 810.

May fine an officer of the magistrate's establishment for negligence or disrespect while in attendance on the sessions, 811.

To report to the nizamut adawlut every instance in which the magistrate is guilty of neglect or misconduct in the discharge of his duties; or if he omits or refuses to obey his orders, 734—if in a matter necessary to the due conduct of any pending trial, he may represent it either in the statement of convictions or acquittals, or in a separate letter, 809.

Officer other than the judge holding the sessions.

To be guided by the same rules as the session judge, 740.

Government may direct any commissioner, or judge, not being the magistrate by whom the commitments were made, to hold the sessions, 741.

Instructions issued to an additional session judge, 741*n*.

Commissioner of circuit to hold the sessions, without reference to government or the nizamut adawlut, if from absence or indisposition the session judge is unable for a month to perform the duty, or if he has made the commitment, 742.

Session judge to report, if he is unable from such cause to hold the sessions, in the *western provinces* to the commissioner, in the *lower provinces* to the nizamut adawlut, 743 —or to government, 752.

If the session duties are reserved to the commissioner, he is to try the commitments as soon as is practicable, 744.

When previously concerned in the case.

Judge cannot try a commitment made by himself as magistrate or in any other capacity, 745.

Nor when, in the case of a foreign territory, he had applied to government for permission to commit, 746.

Nor where he had previously as magistrate committed other persons in the case, 748.

Cannot take cognizance of appeals from orders passed by himself as magistrate or in any other capacity, 747.

Cannot try a person committed for trial by himself in his capacity of civil judge, 749—except in a case of perjury, 749*a*.

But may try, if he as civil judge made over the case to the magistrate, and the magistrate committed on his own discretion, 750.

And must take cognizance of the appeal from the order of the magistrate, where he as civil judge made over the prisoner to the magistrate to be punished or not at his discretion (as for resistance to civil process), 751.

When the judge from any such cause is prevented from taking up a case, he is to report to government stating to which of the neighbouring tribunals the case can be most conveniently referred with advertence to the residence of the parties concerned, 752.

Miscellaneous rules.

How far he may close his court in the vacations and on holidays, 753.

May employ his head clerk, to attest copies of decrees and documents granted on stampt or plain paper; to attest copies of proceedings sent to other courts; to register

SESSION JUDGE.—*Continued.*

Miscellaneous rules.—Continued.

mokhtarnamahs in English, preparing them for the judge's attestation, 754—but the head clerk cannot attest any document which is not previously attested and certified by the head ministerial native officer, *id.*

To address applications for leave of absence direct to the judicial secretary to government, 1341 and to forward therewith a statement of business pending in all departments, 755—before availing himself of leave, the judge must prepare the statement of persons punished without reference or acquitted by himself; or to furnish the officer taking charge with a certificate of the cause of his inability to do so, 756.

Judge how to proceed if his predecessor left a decision unsigned, 757.

Officer in charge of current duties.

Officer giving charge to point attention to this rule, 758.

Officer taking such charge to exercise such powers only as are indispensably necessary for the execution of processes or orders of the nizamut adawlut, for the issue of the warrants of that court, making returns to such warrants, and the transmission to the court of the proceedings of criminal trials, for the execution of processes of other courts, and other matters of emergency: also the periodical statements and reports, 758.

In case of the presentation of an appeal for staying execution of magistrate's order, the officer in charge is to forward copy to magistrate, who will act on his own discretion, 759.

Officer in charge may grant limited leave of absence in urgent cases to the vakeels and amlah, 760.

SESSIONS.

General rules.

Matters of form are of great importance in criminal trials, 761.

Trials to be distinguished by the month in which they are held, and a separate calendar kept for each month in each district, 762—form of heading of record, *id.*

Monthly statements of sessions to be designated by the month in which the trials were concluded or postponed, *id.*

Must be held in the established court-house, 763.

The practice of holding more than one trial at the same time is prohibited, 764.

Trials of prisoners on distinct charges to be kept as far as possible separate by the magistrate and session judge, 765.

Proceedings

To be written on paper 12½ inches by 9½ in a clear legible hand, 766.

Numerical list of the papers to be prefixed, *id.*

The nuthee to be connected by a string or tape passed through the papers on the right-hand side near the top, the ends united with wax and the seal of the court impressed thereon, *id.*

Papers to be arranged in the order in which the proceedings were held with a descriptive marginal note on each, 767.

Form of the record of a criminal trial, *id.*

Judge to pay particular attention to these rules, and examine each case himself, 768.

Description of the weapon to be given in cases of personal injury, 769.

Description of stolen property recovered, with numbers, and particulars of the finding, 770—the numbers of such articles are to be taken throughout the foujdaree and sessions proceedings from the numbers in the police chalan, 771, 1180.

Order of proceeding:—the charge, the prisoner's confession or denial,—the evidence for the prosecution,—the prisoner's defence,—the evidence for defence, 772—order to be observed strictly, 773.

Prisoner not to be examined, nor his previous confessions recorded, till after the close of the case for the prosecution;

SESSIONS.—*Continued.*
Proceedings.—Continued.
his first answer should be guilty or not guilty, 774—no further questions to be addressed to him then, 776.
Charge to be explicitly stated to the prisoner in the words prefixed to the record, 775—if more than one prisoner, the question is to be addressed separately and distinctly to each by the judge himself, 777- if the judge omits to state any part of the charge, the prisoner cannot be convicted of that part, 778.
Although the prisoner pleads guilty, the court is to proceed in the trial in the ordinary course, 779.
If any papers on the magistrate's proceedings form part of the proof, as confessions, inquests, or dying declarations, such papers to be entered on the record in original, and evidence taken thereto, attested copies being filed with the magistrate's proceedings, 775—in cases of murder the original inquest is always to be entered on the session record, or the omission explained, 954*a*—translations to be made and annexed to the originals if written in a peculiar or corrupt dialect, *id.*
In cases depending on the discovery of stolen property by police officers on a search, the original chalan of the property is to be entered on the record, 1178.
Deposition of surgeon to be taken on oath instead of a written report, 780
No report or paper to be placed on the record, or referred to in proof of the charge, unless established by evidence, *id.*
Evidence for prosecution cannot be taken in the absence of the accused, even in proof of his confession, 782—so, in the case of persons committed as accomplices in a crime, of which some of their associates have been previously convicted, the judge cannot proceed upon the record of the former trial, 781.
Judge to notice and to question the witnesses on discrepancies between their depositions before him and before the magistrate, 783—such discrepancies and contradictions of the witness to be recorded, 784.
Foujdaree depositions are not to be read in the presence of the witnesses until they have given evidence, 783.
Judge to place a mark in the calendar opposite the name of every witness examined; and to add a memorandum of the names of all witnesses whom he has summoned in addition to those entered in the calendar, 959.
Prisoner is not to be called upon for his final defence, until the crime charged is proved, 785—if the evidence for the prosecution is clearly insufficient for conviction, the proceedings should be closed at once, 786—but if any thing be proved which inculpates or criminates the prisoner, the trial must be completed in the ordinary way, *id.*
Only two witnesses to the sooruthal need be bound over to give their evidence at the sessions, 653.
Judge may always send for further witnesses if he considers their evidence necessary, *id.*
Judge cannot decline to put a prisoner on his defence on account of his extreme youth or other cause, 787.
After the evidence for the prosecution, defence to be taken; and then the evidence for the defence, 788.
Prisoner not to be examined so as to criminate himself, *id.*—or cross-questioned, 789 nor examined as to his confession beyond his simple avowal or denial of the same, 790.
Judge cannot decline to examine witnesses for defence, of whatever nature their evidence may be, and although he attaches no weight to their testimony, 791.
Prisoner may re-examine for defence witnesses who have been already heard for the prosecution, 792.
In the case of a Christian prisoner, his parentage and place of birth are to be stated in the jail delivery statements, and in the letter of reference if the trial is referred, 794.
If the judge thinks that the prisoner has stated his age inaccurately, he is to specify on the record his opinion of his apparent age, 967.
Prisoners always to be referred to by their names, and not by their numbers in the calendar, 795.

SESSIONS.—*Continued.*
Proceedings.—Continued.
If a prisoner's real name is discovered after his pleading to a false name, the former should also be inserted in the warrant with an alias, 796.
Correctness and uniformity to be observed in spelling the names of the prisoners, 797.
If there are several prisoners bearing the same or similar names, the name of the father is always to be specified whenever the name of one is mentioned, 797.
In writing the native names of men and places, the orthography of the original is to be preserved as closely as possible, 798.
In ordinary cases the complainant must appear to conduct the proceedings before the sessions court, 709—and the judge may always cause the attendance of the prosecutors, if their *vivâ voce* evidence is necessary, unless they are native ladies of rank, 710. See PROSECUTOR and PROSECUTOR, PUBLIC.
Prisoner held to bail for trial at the sessions may be admitted to appear thereat by vakeel, if sufficient reason is shown, 713—but in most cases the actual personal attendance of the accused is necessary, 793—the personal attendance of a female might be properly dispensed with, *id.*—judge may require the attendance in person of the accused at any time during the trial, 713—the attorney in such cases need not be an established pleader in the civil court, 714.
Prisoners personally present may avail themselves of the advice of vakeels and agents; but such vakeels cannot plead or interfere in any way, 715.
After the evidence for prosecution and defence, the law officer is to write his futwa and attest it with his seal or signature, 799. See FUTWAS.
The judge is then to pass sentence, except in cases in which he is expressly directed not to pass sentence, and to issue his warrant, 799—if the sentence is for death, or imprisonment for life, the trial is to be referred, and the execution of the sentence suspended, *id.* See SENTENCES BY SESSION JUDGE.
Trial may be completed in regard to some of the prisoners and sentence passed on them, and postponed as to the others, 800. See POSTPONED TRIALS.
If further evidence for the prosecution after the prisoner's defence, he is to be called upon for a further defence, 801
No further evidence for the prosecution can be taken after the closing of the proceedings and the taking a futwa from the law officer, 802—nor after the jury have given in their verdict, without the authority of the nizamut adawlut, 803 when it was desired to take further evidence after the completion of the proceedings, the nizamut adawlut cancelled the futwa, and directed the judge after taking such evidence to call upon the prisoner for a fresh defence, to take another futwa, and to dispose of the case, 804.
Sentence must be passed on every prisoner committed, 695.
Conditional sentence of acquittal cannot be passed, so as to render the prisoner liable to a second trial if further evidence is procurable, 805—but a person discharged by a magistrate for want of evidence may be subsequently committed if further evidence be adduced, 632.
Conditional sentence of conviction may be passed in certain cases. See MISSING PERSONS.
Prisoner may be convicted as an accessary when arraigned as a principal, 806.
Prisoner may be convicted of a less offence when under arraignment for a greater of the same nature and founded on the same facts; but not if the crime established is totally unconnected with that charged, 806.
A conviction of a graver offence cannot be had on a charge of a less heinous nature, 806—on a charge of homicide there cannot be a conviction of murder, 807.
In no case can a prisoner be convicted of a crime to the charge of which he has not pleaded, 808—examples, *id.*
But a conviction may ensue of a crime, which, though not expressly charged, is in fact included in the charge, 808*a*.

SESSIONS.—*Continued.*

Proceedings.—Continued.

A prisoner acquitted because the charge was wrongly laid, may be committed again and tried for the offence of which he has been guilty, 808*b*, 693*a*—but after acquittal by a competent tribunal, he cannot be re-committed on the same charge, 632.

Judge cannot admit a formal compromise of a case committed to the sessions, 698.

Judge cannot, in a case before the sessions, punish the prosecutor for a malicious or groundless complaint, 699.

Judge may report to the nizamut adawlut, in the remarks on the statements or in a separate letter, any neglect of the magistrate to obey his requisition on a point necessary to the due conduct of a trial, 809—and any irregularities committed by the magistrate or the police in the preliminary investigation, 816.

Judge may certify to the superintendent of police any misconduct on the part of the police apparent on the proceedings, intimating that he has done so to the nizamut adawlut, who may report to government, 810.

Judge may fine the magistrate's amlah in attendance at the sessions for negligence or disrespect, 811.

Judge is not to retain the magistrate's proceedings except when it is essentially necessary, 812.

If the magistrate wishes to see the evidence taken before the sessions court, he must state his reasons to the judge who may forward transcripts of the depositions or allow the magistrate's amlah to take a copy, 813.

See WITNESSES, EVIDENCE, CONFESSIONS, FUTWA, SENTENCES BY SESSION JUDGE, and TRIALS REFERRED.

Sufficiency of ground of commitment.

In cases of acquittal the judge is to record his opinion in the column of remarks whether the commitment was made on sufficient grounds, or was erroneous or defective, 814—in the latter case he is to detail the grounds of his opinion and to give the name of the committing officer, *id.*

This opinion is not to be communicated to magistrate, *id.*

If the proceedings of the magistrate require particular notice, a copy of the roobakaree of commitment written on English foolscap is to be sent with the sessions statements, 815.

Judge is to notice any irregularities committed by the magistrate or the police in the preliminary investigation, 816.

Copies of futwa.

In cases completed without reference, copies of futwas are to be forwarded monthly to the nizamut adawlut, in two parcels of acquittals and convictions, in order, 817—and a memorandum to be endorsed on the face of each containing certain particulars, and also the specific charge in the vernacular, *id.*

Where some prisoners are convicted and some acquitted, a copy of the futwa is to be filed with each parcel, *id.*

Copies of futwas, or verdicts of assessors, or copies of the magistrate's roobakarees of commitments, to be written on English foolscap, 818.

Trials held without law officer.

Attendance and futwa of the law officer upon a criminal trial may be dispensed with by order of government, 819—in such the judge is not to pass sentence, but to transmit the proceedings with his opinion to the nizamut adawlut, 820—questions of Mahomedan law arising in such cases to be recorded on the proceedings, 821—if the question regards the competency of a witness, he is to be examined, and the nizamut adawlut may admit or reject his testimony, *id.*

The authority for holding a trial out of the ordinary course of law is to be recorded on the proceedings, 822—and noticed in the letter if the trial is referred, *id.*—if the authority is taken from the magistrate's nuthee, an attested copy is to be substituted, *id.*

In certain cases of thuggee or dacoity, futwas are not to be taken, 822*a*.

SESSIONS.—*Continued.*

Trials held without law officer.—Continued.

If a case be tried without the aid of a law officer or assessors, the Regulation or Act, under which the trial is held, is to be noted on the face of the record, *id.*, 3165.

Session judge may avail himself of the assistance of natives as a punchaet, who are to conduct their inquiries apart from the court, the reference and the answer being in writing, 823—or as assessors, the opinion of each being given separately, and recorded if desired, *id.*—or as a jury, to give in a verdict, *id.*—the mode of selecting the jury, the number of jurors, and the mode of giving the verdict to be at the discretion of the judge, *id.*

In such cases the futwa is unnecessary, *id.*

But if the futwa is dispensed with, the judge cannot pass sentence but must refer the trial, unless he is specifically empowered by the regulations to punish the crime in question, *id.*—whatever is defined or specified in the regulations to be a crime is specifically punishable by the criminal courts, 825.

In all such cases the decision is vested exclusively in the officer presiding, if within his competency, 824.

The sessions court, unassisted by a Mahomedan law officer, is incompetent to declare that to be a crime, which is not so declared by the regulations, 825.

Any person not a Mahomedan may claim to be exempted from trial under the Mahomedan law, 826—in such case the judge must proceed with the assistance of a punchaet, or assessors, or a jury, *id.*

Trials involving religious prejudices should be tried in all possible cases with the assistance of a jury, 827.

A futwa on any point of Mahomedan law may be required without the attendance of the law officer, *id.*

If judge differs from the assessors or the jury, the trial need not be referred, 828.

Case begun with law officer cannot be concluded with assessors, 829.

In a postponed trial, if the jurors cannot be re-assembled, new jurors are to be appointed and the former evidence should be read over to them, 830—but the assessors must hear the case *ab initio*; and two different sets of assessors cannot be employed to give a verdict on different counts, 831.

The services of natives in such capacity cannot be compelled, 832—law officers, sudder ameens, or principal sudder ameens should be invited to act, *id.*

East Indians, not European British subjects by reason of descent, are eligible to serve as jurors or assessors, 833.

Held by judge on circuit.

Proclamation to be made of the date on which the judge will arrive to take up the cases, 675.

Magistrate to lay before the judge a statement of cases pending, which have been referred back by the nizamut adawlut, or postponed at a previous sessions; and judge is to take up such cases first, 839.

If such postponed cases are not ready, the magistrate is to explain the cause of delay; and in cases referred back by the nizamut adawlut, his explanation with the judge's opinion is to be forwarded to that court, *id.*

Those cases to be tried first, which had risen at the greatest distance from the sudder station, that there may be time for further enquiries or the production of further evidence, 840.

Magistrate may make commitments after the arrival of the session judge on circuit, to be tried at the session then pending; but this permission is limited, 676.

Referrible trials are to be transmitted from the station at which they are held, whenever possible; if impossible, the judge is to report before quitting the station what referrible trials are so deferred; and the transmission of trials is in no case to be delayed beyond 10 days after his arrival at the next station, 952.

See COMMITMENT, *made at subordinate station.*

SETTLEMENTS.

Judicial officers cannot carry into effect the decisions of punchaets under Reg. IX. 1833 in matters connected with land settlements, 482.

In khass muhals under settlement the magistrate is to arrange with the settlement officer for the keeping up and payment of a sufficient number of chokeedars, 1646—such police arrangements should be a model for other estates, *id.* – the magistrate is to decide what number of chokeedars are to be appointed, and whether they are to be paid in land or money, and the settlement officer is to provide accordingly, informing the magistrate what lands are assigned, *id.*

Tehsildars and village officers in khass muhals are required to obey the same police rules as private zumeendars; and magistrate is to report instances of neglect to the superintendent of police, 1865.

In disputes for the possession of lands, the orders of the magistrate under Act IV. 1840 are not affected by the decisions of the revenue authorities except pending settlement; in which case the magistrate is to certify such disputes to the revenue authorities, 2773

SEWAEE COLLECTIONS. See COLLECTIONS SEWAEE.

SHERIFF'S OFFICERS.

Magistrate ought to render assistance to a sheriff's officer entrusted with the execution of a writ of capias; but such assistance must be confined to the legal execution of the writ, 1217—he should prevent a breach of the peace when the arrest is made, or rescue, *id.*—he may bind over the prisoner to keep the peace towards the bailiff while proceeding to Calcutta, *id.*

See PROCESSES, *aid to be given to process of supreme court*

SHIPWRECKED GOODS.

Plunder of, by the crew of a stranded vessel, who broke open the box of a passenger, held to be theft, 3128.

Precedent of plundering a stranded boat, 3130.

SHOORB (drinking wine).

Punishable under the Mahomedan law by *hudd*, 10.

SHUBKHOONEE. See DACOITY.

SIGNATURE.

Penalties for forgery apply to counterfeit signatures to fraudulent and injurious fabrications or alterations of written deeds, or of written or printed papers, 3313.

In Mahomedan law, a man cannot swear to his own signature unless he remembers the act of signing, 421—and comparison of hand-writing is inadmissible, 421*a*.

SLANDER. See ABUSE.

SLAVERY.

The importation of slaves is a penal offence, 2988.

Punishable by imprisonment and fine, 2989.

Persons imported as slaves are to be discharged or sent back to their friends at the discretion of the magistrate, 2990.

These provisions are not applicable to the sale of slaves not imported, 2991.

All slaves imported into a British province from any British or foreign province are declared free, 2992.

All persons knowingly concerned in the sale or purchase as a slave of any man, woman, or child, so removed, are liable to imprisonment and fine, 2993.

This does not prohibit the transfer of slaves for money, if not removed from one territory to another, 2994.

Selling free-born persons is an offence liable to discretionary punishment, 2995.

Public officers are in no case to sell persons or the right to their services, 2996.

No rights arising out of an alleged property in the person and services of another as a slave are to be enforced by any court or magistrate, 2997.

SLAVERY.—*Continued.*

The right to property remains the same though the owner or the person from whom it is derived was a slave, 2998.

What is a penal offence if done to a free person, is equally so if done to a slave, 2999.

In cases of homicide, it is no excuse that the person slain was the slave of the prisoner, or of any other person, or a slave appropriated for the service of the public, 2881.

Police officers are not to allow the registration before themselves of slave-girls kept for the purposes of prostitution, 1706.

See CHILD-STEALING.

SODOMY.

The regulations prescribe no specific punishment, 3029.

The judge may award the general discretionary punishment within his power, *id.*

Trial may not be referred unless the judge differs from the law officer, or deems the punishment within his power insufficient, *id.*

If the judge considers that tusheer (or other punishment not within his competence) should be awarded, he must refer the trial, 3030—tusheer has been prohibited by Act II. 1849.

In Mahomedan law, it is doubtful whether sodomy is classed with *zina* and liable to *hudd*, 3031—but certainly not liable to *hudd*, if committed with a beast, *id.*

Precedents of trials, 3032.

SONK, SONSA, SAHAR, AND GOBERDHUN.

System of administration of justice in, 35.

SOORUTHAL.

When investigating heinous offences, the police are to hold a sooruthal in the first instance, 1757, 1766—and to forward it to the magistrate, in place of a report, the moment it is drawn up, 1733, 1758, 1767.

In cases committed to the sessions, it is not necessary to bind over more than two witnesses to the sooruthal to give evidence, 653—the judge may call for further evidence if he wishes for it, *id.*

SORCERY.

Persons putting another to death on the ground of his or her being versed in or practising sorcery, to be held guilty of murder, 2888.

Persons forming themselves into an assembly for the purpose of trying any man or woman on a charge of witchcraft, or other charge, or causing such assembly to be held, if any person or persons are in consequence put to death,—to be considered as principals or accomplices in the murder, 2888.

Precedents;—where the prisoners were actuated by superstition, 2933—where the deceased professed witchcraft, *id.*

SPECIAL POWERS.

Applications made by magistrates, that their assistants may be invested with higher powers, are to be made to the session judges, who will forward them direct to government, 568*a*—such applications are not to be made to the superintendent of police, 568.

May be conferred on an assistant duly qualified, 569.

Extend to imprisonment for 6 months, and corporal punishment or fine of 200 rupees commutable to a further period of 6 months, 570—if more severe punishment is required, the case must be submitted to magistrate, 571.

An assistant vested with, has no power to make commitment, 572—even when in charge of the office during the absence of the magistrate, 573.

Cannot take cognizance of charges against Europeans under 53rd Geo. III. cap. 155, 574.

May decide cases under Act. IV. 1840, 2785.

May decide cases under Reg. VII. 1819, 2980, 3403, 3424.

Cannot require security for good behaviour, 2671.

Special powers do not descend to the successor in office, 575—government is at all times competent to revoke them, *id.*

SPIES.

Darogahs are prohibited from encouraging or employing, without the express sanction of the magistrate, any goindahs or spies who earn a livelihood by the profession of an informer, 1705, 279.
See INFORMERS.

SPIRIT SHOPS. See ABKARS, and OFFENCES AGAINST GOVERNMENT—OPIUM AND ABKAREE.

STAMPS.

No papers required by these rules to bear a stamp are to be filed, exhibited, received, or admitted in any court of judicature without such stamp, 1392.
Bail-bonds, mochulkas, and security-bonds, to be charged as petitions, 1393—mochulkas on the release of prisoners, and those taken from prosecutors and witnesses to secure their attendance, are exempted, *id.*—so, security-bonds taken by police officers, 1393*a*.
Copies of documents filed on record and taken out for use or reference, or when left on proceedings in place of originals withdrawn, to be charged 8 annas per sheet, 1394—to be written on paper of a particular size, *id.*—both the application for the copy, and the copy itself must be on stampt paper, 1395.
Mokhtarnamahs, wukalutnamahs, and other powers, to be charged as petitions, 1396—executed by native officers and soldiers are exempted, *id.*
Petitions, durkhasts, or applications, if addressed to a magistrate 8 annas per sheet,—if to a commissioner of circuit or session judge one rupee;—if to the nizamut adawlut two rupees per sheet, 1397—if the whole matter of a petition cannot be comprised in a single sheet, the additional sheets need not be stamped, 1399—charges and informations respecting crimes not bailable by the regulations are exempted, 1397—so are petitions from prisoners, convicts, and persons under examination or otherwise in duress or under restraint, *id.*—but this exemption as regards civil prisoners refers only to petitions relating to their treatment in jail, and as regards criminal prisoners to petitions relating to their treatment in jail and the case in which they are confined, 1400—appeals against chokeedaree assessment are also exempted, 1397—and also communications regarding police matters not intended for record, *id.*—magistrate may exercise discretion in admitting petitions on plain paper; but generally petitions required to be presented on stampt paper should not be read unless so presented, 1398.
Razeenamahs to be charged 8 annas, 1401.
Applications for payment of money deposited in court must be on stampt paper, unless a specific order has been passed for the payment, 1402.
Size of stampt paper to be used under the above rules, 1403.

Offences against the stamp laws.

Any person filing or recording a document on stamped paper not bearing the signature and endorsement of a licensed stamp vender, is to forfeit five times the value of the stamp, 2497—if the stamp or signature is forged or counterfeit, the person producing it, unless he can clear himself, is to forfeit twenty times the value of the stamp that should have been used, *id.*—if the stamp is forged, but the signature and endorsement are true, the paper is to be forwarded to the collector, who will forward it to be duly stamped, and recover the cost from the vender, *id.*
If the paper merely requires the prescribed endorsement and signature of the vender, the court or authority, before whom it is filed must levy the penalty, 2497*n*.
If the paper bears such endorsement and signature, but has a forged stamp or signature, and the person filing it proves that he bought it bonâ fide, the paper is to be made over to the collector to proceed against the vender, *id.*
If the paper, endorsement, and signature are all forged, the court or authority should proceed according to the rules in other cases of forgery, *id.*

STAMPS.—*Continued.*

Offences against the stamp laws.—Continued.

Every vakeel or mokhtar presenting any document requiring to be stamped on unstamped paper, or on paper not bearing the proper stamp, or on paper bearing a counterfeit stamp unless signed and endorsed by a vender, is to forfeit five times the amount of the stamp or of the difference, 2498—the fine to be imposed and levied by the court in which it is filed, *id.*—it is not optional with the courts to remit such fine, 2499.
Persons sentenced under these rules are to be imprisoned in the civil jail, 2500—but stamp venders convicted of extortion, and sentenced by the collector to imprisonment are to be confined in the criminal jail, *id.*
A stamp vender giving in true accounts on his removal or resignation, may be fined by the collector for the non-delivery of paper or money due according to the account; but if the account is false, covering embezzlement or taking credit for remittances never made, the vender is liable to a criminal prosecution for fraud and embezzlement, 2501.

Forgery of stamps.

Penalty for forging, or procuring to be forged; any counterfeit stamp or stampt paper in imitation of any public stamp; imprisonment in banishment for 16 years, 2477—judge may reduce the sentence to 7 years' imprisonment, *id.*—if further mitigation is necessary, the trial must be referred, 2478.
Penalty for using, issuing, selling, or otherwise disposing of, or attempting to dispose of, counterfeit stampt paper, bearing the imitation of a public stamp, knowing the same to be counterfeit; imprisonment for 7 years, 2482—in case of repetition 9 years, *id.*—after two convictions if the judge considers 7 years' insufficient, he is to refer the trial, *id.*
Penalty for having in his possession, without lawful or satisfactory excuse, any counterfeit stampt paper, bearing an imitation of any public stamp; fine equal to four times the nominal value of such stampt paper or imprisonment for 6 months, 2485—half the fine to be given to the informer, *id.*—the stampt paper to be sent to the superintendent of stamps, *id.*—this does not apply to a person carrying or conveying counterfeit stampt paper for another unless there is proof that he knew the nature of the paper, 2486.
Precedents; vending forged stamps, 2494—forging stamps and vending them, 2495—altering the value of stampt papers, 2496.

STARVING.

Rajcoomars causing the death of their female children by prohibiting their receiving nourishment or in any other manner, to be tried as for murder, 2592—magistrate how to proceed in such case, *id.*

STATE OFFENCES.

May be tried before the ordinary tribunals, 2688.
Government may issue a commission for the trial of any offences of treason, rebellion, or crime against the state by one or more judges, with or without a law officer, 2689.
If the government does not take the case out of the ordinary administration of criminal justice, the ordinary tribunals are to proceed as usual, 2690.
Such special courts are to be guided by the same rules as ordinary courts; except that their sentence is in every instance to be reported before execution to the nizamut adawlut; and they are to be guided in all particulars by the special orders which they receive from government or from the nizamut adawlut, 2691.
Such courts how to proceed in case of the death or absence of any judge or law officer, 2692.
Nizamut adawlut are to proceed as in ordinary cases; but are in every case to report their sentences to government; and to wait the orders of government for 3 months, 2693.
Magistrates are to give immediate information of such offences to government; and to be guided by the special orders of government, 2694.

STATE OFFENCES.—*Continued.*

These rules do not alter or affect the jurisdiction of the supreme court, 2695.

The functions of the ordinary criminal courts may be suspended by government, and martial law established during war or open rebellion, 2696—in such case persons owing allegiance to British government may be tried by courts martial for overt acts of rebellion, or for assisting the enemy, *id.*

Persons owing such allegiance found guilty of such offences are punishable by death and confiscation of all property and effects, 2697.

But government may direct the trial of such offences by the ordinary courts or by the special courts described above, 2698.

When martial law is proclaimed, the magistrate is to direct all officers in command of troops, employed in his jurisdiction, to act under the proclamation until it is recalled, 2699.

Persons charged with any acts of overt rebellion and apprehended when not in the actual commission of such offences, are to be delivered over to the civil power; and the magistrate is to adopt the necessary measures for bringing him to trial on a charge of treason, *id.*

Magistrate is to attach all property belonging to persons guilty of overt acts of rebellion; and to continue the attachment until the pleasure of government is known, placing the landed estates under the management of the collector, *id.*—if the property is in another district he is to communicate with the magistrate of such district, *id.*—military officers attaching property are to make it over to the magistrate, *id.*

Resisting the police does not amount to rebellion, 2700.

Precedents; seditious practices and disturbing the peace, 1701—rebellion attended with various murders and other enormities, and attacking the magistrate, 2702—rebellion attended with the loss of one life and resistance to the officers of government, 2703—rebellion not attended with murder but involving acts of oppression and extortion, 2704.

Mahomedan law regarding rebellion, 2705.

STATE PRISONERS. See JAIL, *state prisoners.*

STATEMENTS.

Care and attention required in their preparation and unabated vigilance in their supervision, *page* 765.

Session judge to notice irregularities, and to state in his remarks the nature of any orders which he issues thereon, *id.*

How far the proportion of acquittals to convictions is a test of the system used in the district, *id.*

In the annual report the session judge is to state what opinion he has formed of the magistrate and his subordinates from the result of appeals, *page* 766—and from the result of commitments, which should be illustrated with prominent reference to particular cases, *id.*—also to advert to the share taken by the magistrate's subordinates in the disposal of foujdaree business, and with that view to require the magistrate to report specifically on these points, *id.*

The duration of cases, a test of an efficient system, *id.*—if excessive, or if much variation between years or districts, the causes to be carefully investigated, *id.*

Judge to report on the use of the jury or assessor system in criminal trials, *id.*

Judge is also in the annual report to notice any thing worthy of remark in the laws in force, or in the instruments for administering them, as well as on the condition of the district, *id.*

Whenever a judge leaves his office, except temporarily, he is to place on record a minute of the particulars noted above, *id.*

Manuscript forms not to be used; timely application to be made for those lithographed, *page* 767—no alterations to be made in the forms prescribed, *Magistrate's rules No.* 86.

STATEMENTS.—*Continued.*

To be considered due immediately on the expiration of the period to which they relate, *Magistrate's rules No.* 5.

STATEMENTS, SESSION JUDGE. Appendix D.

Absence, leave of, judge to prepare statements of convictions and acquittals before availing himself of, or to certify inability, *Rule No.* 39

Acquittals, disproportion of to convictions, *Rule No.* 16.

Appeals, regular, statement of, *Rule No.* 29—miscellaneous, statement of, *Rule No.* 30—under Act IV. 1843, to be entered in statement No. 4 with note, *Rule No.* 55.

Assessors, rank, profession, and other particulars of persons selected as, to be given in statement No. 13, *Rule No.* 48.

Blank returns not to be sent; when there is no matter for entry in any form, the judge is to pass his pen through the designation of such statement in the letter forwarded with the statements, *Rule No.* 62.

Calendar of trials postponed, commitments to be regularly entered in, until disposed of, *Rules Nos.* 7 *and* 43—explanation of delay to be noted in, *Rule No.* 44—case not to be postponed beyond 6 months, except on report to the nizamut adawlut, *Rule No.* 45.

Called for trials which have been sent back, judge to note in the next letter, submitting the statements whether the further enquiry in, is completed, and if not to explain the delay; and to continue to do so every month, *Rule No.* 9.

Called for trials, how and where to be entered, *Rules Nos.* 40 *and* 41—distinction to be made between calls by letter and calls by precept, *Rule No.* 42.

Cases to be considered under trial from the date of commitment, *Rule No.* 7—how to be numbered, *Rules Nos.* 32, 56, 58, 59 *and* 60—name and official designation of the committing officer to be given in each case in all the statements, *Rule No.* 61.

Change of officers, report of, to be made direct to the nizamut adawlut, specifying the authority for the transfer, the date of order, and power of the relieving officer, and certifying that a list of unanswered letters and reports has been given and received, *Rule No.* 1—dates of receiving and delivering over charge to be given in statement No. 1, *id.*

Change of officers, in case of, the judge is to prepare the statements of convictions and acquittals before delivering over charge, or to certify his inability, *Rule No.* 39—and to leave a minute, except in case of merely temporary absence, embracing the points required to be noticed in the annual report, *page* 766, *para.* 12.

Charge of the session judge's office, officer in, to have his attention called to the rules regarding his functions and the transmission of statements and reports, *Rule No.* 2.

Commitments to be examined by judge on first taking up a trial, and the necessary alterations directed, *Rule No.* 6—when to be entered in statement No. 1, *Rules Nos.* 5 *and* 6—to be considered pending from the date of commitment, *Rule No.* 7—and to be entered as a postponed trial from that date until finally disposed of, from whatever cause the delay may arise, *id.*—judge competent to cancel, *Rule No.* 12—explanation to be annexed of delay in disposing of, *Rule No.* 44. See COMMITMENT.

Committing officer, name and official designation of, to be given in each case, in all the statements, *Rule No.* 61.

Convictions, disproportion of acquittals to, *Rule No.* 16.

Corporal punishment, additional imprisonment in lieu of, where to be entered, *Rule No.* 21.

Correspondence, copy of, regarding errors or excesses of authority to accompany the statements, *Rule No.* 51.

Crimes, mode of numbering, *Rule No.* 34.

Delay, explanation of, in the disposal of commitments, to be noted, *Rule No.* 44—no case to be delayed more than 6 months except on report to the nizamut adawlut, *Rule No.* 45.

STATEMENTS, SESSION JUDGE. Appendix D.—*Contd.*

Duration of cases in magistrate's court, judge to remark on, *page* 766.
Explanation to be given of disproportion between acquittals and convictions, *Rule No.* 16.
Explanations to be required from magistrates when necessary; and in forwarding such to the nizamut adawlut the session judge is always to state whether he considers them sufficient, *Rule No.* 50.
Fines imposed in lieu of labor to be entered in part 4, statement No. 1, *Rule No.* 23—the whole amount realised is to be entered, in whatever month imposed, *id.*
Forms lithographed, sufficient supply of, to be kept in hand, to avoid the use of manuscript copies, *page* 767—not to be altered except under express permission, *Magistrate's rules No.* 86—not to be forwarded blank; if no matter for entry, judge how to proceed, *Rule No.* 62.
Futwas, copies of, in cases completed without reference, to be sent with the statements to the nizamut adawlut, 817—to be written on English foolscap paper, 818.
Imprisonment adjudged, details of, *Rule No.* 21.
Jurors, rank, profession, and other particulars of persons selected as, to be given in statement No. 13, *Rule No.* 48.
Justices of the peace, appeals from orders of, to be entered in statement No. 4, with a note distinguishing such appeals from ordinary cases, *Rule No.* 55.
Labor, fines in lieu of, to be entered in part 4, statement No. 1; and the whole amount realised to be entered, in whatever month imposed, *Rule No.* 23.
Letter submitting the statements, form of, prescribed, *Rule No.* 54—pen to be passed through the designation of statements not sent, *Rule No.* 62—report to be made in, of cases originally called for and sent back for further enquiry, *Rule No.* 9.
Magistrate's roobakarees, copies of, forwarded with the statements, to be written on English foolscap paper, 818.
Names of officers employed to be entered at the head of statement No. 1, *Rule No.* 1.
Name of committing officer to be entered in each case in all the statements, *Rule No.* 61.
Numerical order, in which trials have been held, to be carefully preserved, *Rule No.* 32—each series commencing with the first and terminating with the last case decided in each sessions, *Rule No.* 59—of prisoners to be kept according to the number given to each prisoner by the magistrate, *Rules Nos.* 33 *and* 57—the magistrate of each district to keep a separate monthly series, *Rule No.* 57—the judge is to note the month under each case, *Rule No.* 58—number of crimes how to be kept, *Rule No.* 34.
Officers employed, the name and official designation of, to be given; and, in case of changes, the dates of receiving and delivering over charge, *Rule No.* 1.
Postponed trials, to be regularly entered in the statement until the final sentence be passed, *Rules Nos.* 7 *and* 43—delay in the disposing of the commitment to be explained, *Rule No.* 44—no trial is to be postponed for more than six months, except on report to the nizamut adawlut, *Rule No.* 45.
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Remanded trials, judge to note in the letter submitting the statements whether the further enquiry regarding, is complete; and, if not, to explain the delay, *Rule No.* 9—such cases to be entered in the same way every month, until finally disposed of, *id.*
Remarks, to include explanation of disproportion between acquittals and convictions, *Rule No.* 16.
Riots attended with murder to be entered under the heading 3 in statement No. 1, with a note in the remarks distinguishing such cases from others of simple murder; and riots attended with homicide or with violent breach of the peace under headings 31 *and* 32, *Rule No.* 63.
Roobakaree, final, in referred trials, to record the order for reference, *Rule No.* 36.

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Affrays attended with murder to be inserted under heading 3, statement 1, with a note in the remarks to distinguish them from other cases, *Rule No.* 135.
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Attempts to commit crimes, how and where to be entered, *Rule No.* 62.
Bail, prisoners in bailable cases always to be allowed the option of giving, *Rule No.* 32—if persons are detained in jail when charged with bailable offences, the grounds of detention are to be noted in the remarks, *id.*—if more than 100 persons are attending on bail explanation of the cause to be given in the remarks, *Rule No.* 34.
Burglaries and thefts uninvestigated, note to be given regarding, *Rule No.* 105.
Burkundazes and officers of police sent back to their duties after admonition, to be entered as acquitted, and a note appended in the remarks, *Rule No.* 25.
Called for trials to be entered in statement No. 5, until the final order of disposal reach the magistrate, *Rule No.* 77.
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Commitment; when of several individuals apprehended and sent in, in any one case, some are convicted or committed for various offences, and some are acquitted, entries how to be made, *Rule No.* 9.
Commitment to be made on the gravest charge, where there is any doubt, *Rules Nos.* 19, 21—for killing thieves, how to be entered, *Rule No.* 20.
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Complaints, all cases of, lodged in the magistrate's court and proceeded with, to be entered in cols. 6 and 7, statement No. 1, *Rule No.* 15—but if rejected without apprehending or summoning the accused, they are not to be entered in statement No. 1, *Rule No.* 36.
Corporal punishment, persons sentenced to additional imprisonment in lieu of, when the aggregate period exceeds 2 years, to be entered in cols. 1 and 2, part 6, statement No. 1, *Rule No.* 49.
Corporal punishment, persons sentenced to, for petty thefts, under Act III. 1841, to be entered in part 9, statement No. 1, *Rules Nos.* 109 *and* 110.
Crimes, systematic classification of, *Rule No.* 6—care required in the selection of terms used to designate miscellaneous offences, *Rule No.* 7.
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realised in such different classes how to be entered, *Rules Nos.* 57 *and* 58—the total amount realised in the period to which the statement relates, to be entered without reference to the time when the fines were imposed, *Rule No.* 97—fines imposed in lieu of labor where to be entered, *Rule No.* 98.
Foreign territory, cases occurring in, how to be entered, *Rule No* 94.
Forms lithographed not to be altered unless with express permission, *Rule No.* 86.
Hajut, when the true number of persons in, exceeds 50, explanation to be given in remarks, *Rule No.* 31.
Index; the letters of the alphabet to be used in consecutive order for indexing crimes entered in part 1, statement No. 2, *Rule No.* 61—attempts to commit crimes to be numbered so as to correspond with the respective headings in part 1, statement No. 1, *Rule No.* 62.
Insane persons, acquitted on that account but detained in confinement in default of security to be entered in part 5, statement No. 2, and a note to be appended in explanation, *Rule No.* 136.
Jail, when the true number of persons in, under trial, exceeds 50, an explanation is to be given in the remarks, *Rule No.* 31—if persons charged with bailable offences are detained in jail, the grounds of their detention are to be noted in the remarks, *Rule No.* 32.
Justices of the peace, cases decided by magistrates as, and those brought before them under the 53rd Geo. III. cap. 155, to be entered in a note under the head of remarks, *Rule No.* 106.
Killing thieves, cases of, how to be entered, *Rule No.* 20.
Lotteries, persons fined for keeping, to be entered in part 10, statement No. 1, *Rules Nos.* 109 *and* 110.
Miscellaneous offences how and where to be entered, *Rule No.* 61.
Mochulka, persons released on, when not convicted of a specific offence, how to be entered, *Rule No.* 25.
Neglect of duty, zumeendars, and officers of police, summoned on a charge of, and discharged after admonition, to be entered as acquitted, and a note added in the remarks, *Rule No.* 25—zumeendars and chokeedars brought up for neglect of duty to be entered under separate headings in part 1, statement 2, *Rule No.* 125.
Officers employed, the name and official designation of all, and in case of changes the dates of receiving and delivering over charge, to be given, *Rules Nos.* 1, 112, *and* 113—every change to be immediately reported direct to the nizamut adawlut, stating the authority for making over charge, the date of the order and the power vested in the relieving officer; but a copy of the order need not be sent, *Rules Nos.* 2 *and* 3—the relieving officer is to be furnished with a list of unanswered letters and of periodical reports and statements overdue; and a certificate of the receipt of such list is to accompany the report, *Rule No.* 4—the extent of the powers exercised by the several officers are to be specified under this head in part 1, statement 1. C. O. No. 184 of vol. 3.
Postponed trials how to be entered, *Rules Nos.* 74 *and* 75.
Referred trials to be entered in statement 5, until the final order of disposal reach the magistrate, *Rule No* 77.
Remarks; under this head are to be entered all observations and explanations, illustrative of the statements which the magistrate may have occasion to make or which are required by the rules, *Rule No.* 80—the numbers of the particular statement, part, heading, and column, respectively, are invariably to be prefixed, *Rule No.* 81—remark required to show the number of simple burglaries and thefts uninvestigated under Reg. II. 1832, *Rule No.* 105—if the number of prisoners in hajut exceeds 50, *Rule No.* 31—if prisoners charged with bailable offences are detained in hajut, *Rule No.* 32—if the real number of per-

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Roobakaree to be sent by the magistrate to the judge on the first of every month, certifying commitments, and modifications of former months, made in the month just closed subsequent to those of which previous information had been given, *Rule No.* 24.

Riots attended with murder to be entered under heading 3, with a note in the remarks to distinguish them from other cases, *Rule No.* 135.

Security for good conduct, persons confined in default of, how and where to be entered, *Rule No.* 71—names of persons confined for periods exceeding three years and certain particulars to be given, *Rule No.* 72.

Security to keep the peace, persons confined in default of, how and where to be entered, *Rule No.* 73.

Sessions court, cases pending in, at the close of the period, how to be entered, *Rules Nos.* 74 *and* 75.

Statements to be considered due on the expiration of the period to which they relate, *Rule No.* 5.

Statements monthly and half-yearly to be submitted within 10, and the annual within 15 days after they become due, *Rule No.* 87.

Statements, preparation of, to be superintended in all practicable cases by the covenanted assistant, *Rule No.* 88.

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  - Crimes, *Rules Nos.* 6 *to* 12, 19, 36, 95 *and* 135.
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- part 3, *Rules Nos.* 40 *to* 42, 91, 92, 107 *and* 108. App. E, 3.
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- part 7, *Rules Nos.* 56 *to* 58, 97 *and* 98. App. E, 7.
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- part 4, *Rule No.* 71. App. E, 13.
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Thefts uninvestigated under Reg. II. 1832, number of, to be noted in remarks, *Rule No.* 105—persons sentenced to stripes in petty cases to be entered in part 9, statement 1, *Rules Nos.* 109, 110.

Transfers, from other districts, where to be entered, *Rule No.* 16—to other districts where to be entered, *Rule No.* 28.

Trials referred, or called for, or sent back for further enquiry to be entered in statement 5, until the final order of disposal reach the magistrate, *Rule No.* 77—postponed, to be entered in statement 3, *Rules Nos.* 74, 75.

Under trial in jail, persons exceeding 50, explanation of cause to be given under the head of remarks, *Rule No.* 31—if on bail, explanation to be given when the number exceeds 100, *Rule No.* 34.

Witnesses, diary of attendance of, *Rules Nos.* 117 *to* 124, *and* 137.

Zumeendars brought up for neglect of duty to be entered under a separate heading in part 1, statement 2, *Rule No.* 125.

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Monthly vernacular statement of persons apprehended. App. E, 24.

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No 22. Half-yearly report of civil prisoners. App E, 27.

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Statement No. 1A, part 1. Statement of crimes. App. F, 1.
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STATIONERY.

No English stationery is to be charged for in contingent bills, as such articles can be procured by indent from the government stores, 1382.

STEALING See THEFT.

STOCKS.

Not to be used by landholders and others for the purpose of confining ryots or other individuals indebted to them, 1198, 1894—police officers to report all such cases, *id.*
May be used at thanas during the night to secure persons of dangerous character, or disorderly conduct, or persons who have escaped from custody; but only at night and in such cases, 1784.

STOLEN PROPERTY.

Search for.

Form of search-warrant, 1164—to be addressed to the police darogah or to any other public and registered officer of police, 1165.
Warrant not to be issued except on the oath of the informer or complainant that a robbery has been committed and that he has reason to suspect that the property is in such a place, 1166—or on incidental information before the magistrate, *id.*, 1167.
Police officers are not to search the interior of a house, except under the orders of the magistrate, without a written declaration and a list of the articles missing, 1168.
Police officers to report execution of process on the back of the warrant, 1169.
Police officers are to transmit all representations made to them regarding the receipt or concealment of stolen property to the magistrate at or before the time when they proceed to the search, 1170.
Search to be made without notice, and during the day (unless there is reason to believe that the property will be removed), by the darogah in person, or by the mohurrir or jemadar on a warrant from the darogah, and in the presence of three or more respectable persons and the occupant of the house, 1171.
Magistrate may order the search to be made at night, 1172.
Caution against the surreptitious introduction of articles into the house under search, 1173.
Due notice to be given for the removal of women from the zenana, and suitable means for their removal to be furnished, 1174.
When any property alleged to have been stolen is found, the police officers are to endeavour to trace the actual proprietor, and to question the occupant of the house regarding the means by which it was obtained; and, if his explanation is unsatisfactory, they are to forward him with the property to the magistrate, 1175, 1183—if the property is not claimed, they are to compare it with the lists of property stolen; and if they correspond, they are to send the property to the supposed owner for inspection or to summon him to the thana, 1176.
Police officers to note the particular spot in which the property is found, the time of the finding, and the name of the finder; and all property so found, or of a suspicious nature found on prisoners, or seized under suspicious circumstances, is to be forwarded without delay to the magistrate with a chalan in prescribed form, 1177—care to be taken in the transmission of the chalan, 1178.
Session judge to enter the original chalan upon the record of the trial, 1178.
Articles of value and small bulk are to be sealed up in a box, petarah, or bag, 1179.
A separate number is to be attached to each article; and such number is to be entered in the chalan and quoted in the reports, *id.*—magistrate and session judge to use the same number, 1180.
No property is to be removed from the house unless it is claimed or recognized or considered to be suspicious, 1181.
No property once removed is to be returned without the order of the magistrate, *id.*
On the occurrence of a robbery, the darogah is to require the landholder to publish the list of property stolen in a conspicuous place and in the bazars and haats; and all persons to whom such property is offered for sale are required to give notice to the police, 1182.
If the person in whose possession the property is found denies all knowledge of the robbery, he is to be questioned as to the mode in which he became possessed of it; and the police are to endeavour to trace it, 1183—if his answers are unsatisfactory, and the magistrate considers that the property was illegally acquired, he is to publish a list of the articles, requiring claimants to appear within six months, 1184.
If claim is advanced, the magistrate is to put the case into a regular course of prosecution, 1185.
If no claim is advanced, and if the party found in possession cannot prove his right, the property is to be declared confiscated to government, 1186.
Persons finding suspicious property within their premises, are to convey it to the police within 24 hours; the darogah is to commit the circumstances to writing, to be signed by the declarant and two or more witnesses present, and to forward the property and declaration to the magistrate, 1187.
Confiscated gold or silver ornaments and brass or copper utensils are to be broken up and sold at his public cutcherry as bullion or old metal, 1188.
All unclaimed property belongs to government, 1189—the police are to forward all such property to the magistrate; or, if it cannot easily be moved, to put it in charge of the landholder or head person of the village until the orders of the magistrate are obtained, *id.*—the disposal of such property rests with the magistrate, subject to the control of the superintendent of police and government, without the interference of the civil court, 1190.
Unclaimed property *(ladâvee)* is not to be confounded with the property of persons dying intestate *(lawaris)*, 1190—the disposal of the latter is vested in the civil judge, to whom the magistrate should immediately forward any that comes into his hands, *id.*
Registers of unclaimed and intestate property to be kept in prescribed forms, 1191.
Magistrate cannot search a house for contraband opium as such; but he may search for that or any other deleterious drug which he has reason to believe has been used as an instrument of death, 1192.
Police officers are to pay strict attention to the above rules, 1193.
Darogahs, mohurrirs, or jemadars of police may apprehend without a written warrant persons detected with stolen goods in their possession; but they must be immediately forwarded to the magistrate with a report, 1108.

Knowingly receiving or keeping.

Is a bailable offence, provided the original theft of the property does not form part of the charge, 1141.

STOLEN PROPERTY.—*Continued.*

Knowingly receiving or keeping.—Continued.

Register to be formed of systematic receivers of plundered property, 3043.

In all cases wherein stolen or plundered property is found in the possession of prisoners committed for theft or robbery, a second count should be inserted in the commitment charging them also with knowingly receiving, 656.

In commitments charge how to be worded in the vernacular, 3164—the term "thangeedaree" is not to be used, *id.*

It is always to be noted in the charge whether the property was acquired by theft, burglary, dacoity, highway robbery, or thuggee, 3165.

If the property has been acquired by dacoity or thuggee, the prisoners may be committed by any magistrate and tried by any court; but in all other cases regard must be had to the special jurisdiction, *id.*

If the trial is held without a law officer or a jury, the judge is to note on the face of the record the Regulation or Act under which the trial is held, *id.*

The receipt is presumed to have taken place where the property is found, and not where the robbery occurred, 3166.

Magistrate must commit to the sessions for knowingly receiving or purchasing if the property was acquired by robbery with open violence, or by aggravated burglary, or by theft such as the magistrate must or may commit, 3168 or if the amount or value of the property stolen exceeds 300 rupees, 3170.

Session judge may sentence persons convicted in such cases to 16 years' imprisonment, 3168—and cannot refer the trial, 3169—unless he considers the sentence within his competence inadequate, 861—but in cases of the knowing receipt of property acquired by theft or robbery, the judge is always to explain in his statement of prisoners punished without reference, if the sentence exceeds imprisonment for 6 years, 3126 but this is not meant to fix a maximum sentence for unaggravated cases, *id.*

Magistrate may commit to the sessions for knowingly buying or receiving if the prisoner has been previously convicted of a heinous crime, or if he appears to be an habitual or professional receiver of stolen property, or a person of notoriously bad character, 3171—previous conviction of theft not exceeding 10 rupees is not to be considered a conviction of a heinous crime, 3172—judge may sentence such persons as above, 3171.

It is to be specifically mentioned in the futwas and abstract statement that the offence was committed knowingly, 3173, 3178.

Magistrate may determine, without reference to the sessions, all other cases of knowingly buying or receiving, 3174—and cases of retaining possession of such property after learning that it had been obtained by theft or robbery without informing the owner or the local police officer or magistrate, *id.*

Magistrate may sentence in such cases to imprisonment for three years, *id.*

If any of the prisoners in the case must be committed, the magistrate is not competent to punish the receiver, 3175.

The magistrate in the roobakaree of commitment, and the judge in his abstract statement of sentences passed without reference, are to note the express circumstances of aggravation which led to the commitment, 3176.

Property acquired by burglary comes within the definition of property acquired by theft, 3177.

It does not necessarily follow that the possession of stolen property, the knowledge that it was so acquired having subsequently arisen, is criminal: the magistrate has a discretion not to punish at all; but if the circumstances show it to be an offence, it should be punished as a misdemeanor not of a serious nature, 3178—if in such cases the session judge pass a higher sentence than for three years' imprisonment, he is to state the grounds of the sentence in his abstract statement, *id.*

STOLEN PROPERTY.—*Continued.*

Knowingly receiving or keeping.—Continued.

In all cases the evidence to ground a conviction should go to the mode and circumstances of the receipt, and not only to the fact of possession, 3178.

It is not necessary to prove, when the theft was attended with murder, that the person robbed had possession of the property up to the time of his death, 3179.

A husband and wife should not be indicted jointly for such offence, unless it is in evidence that the wife acted independently and not under the influence of her husband, 3178*a*.

Receivers of stolen property may be punished, although the thieves have not been convicted, if the theft is established and the guilty knowledge is proved, 3180.

The record of a conviction of theft is not sufficient against an alleged receiver to prove the theft, if the latter desires to disprove it, 3181.

The amount of punishment awarded to the thief is no criterion for the sentence to be passed on the receiver, 3182.

Sentence of labor is not commutable to a fine, 929.

Precedents; case of receiving property obtained by theft attended with murder, 3183—case of guilty receipt of embezzled property, *id.*

After a lapse of two years from the theft, and the guilty knowledge at the time of receipt not being proved, the prisoners were acquitted, *id.*

Restitution of stolen property.

Officer disposing of the case may exercise his discretion in restoring to the person robbed any articles, which are proved to belong to him, or to have been purchased with money stolen from him, 3184—so, in a case of embezzlement, 3185.

Magistrate is to furnish certificate of the execution of the order of the session judge for restoring stolen property, 3186.

English law regarding, 3185*n*.

Magistrate cannot make a person repay or restore money or other property, obtained by false pretences or extortion, the money or property not being in court; nor to compel the offender to execute a mochulka binding himself to repay or restore the same, 3230.

Percentage on recovery of

Police officers are entitled to 10 per cent. on the value of all stolen or plundered property which they recover, 1278

Such commission to be paid by the owners of the property on the valuation of the magistrate or some person appointed by him for that purpose, *id.*

Magistrate is to cause the payment of such commission; and may cause a part of the property to be publicly sold, *id.*

Session judge may order the payment of such commission, 1279.

None but police officers are entitled to the commission, 1280.

STORES, MILITARY. See MILITARY STORES.

STRANGERS.

The principal persons in the villages, and all chokeedars and village guards, are responsible for the early and punctual information to the police of the resort to or passage through their villages of any considerable body of strangers, or of the assemblage of such, with other particulars, 1860—penalty in cases of neglect, *id.*

See VAGRANTS.

STRIPES. See CORPORAL PUNISHMENT.

SUB-DIVISIONS, RULES FOR THE GUIDANCE OF OFFICERS IN CHARGE OF.

If an assistant magistrate in charge of a sub-division requires a tent, a report is to be made to the superintendent of police, 500.

Prisoners sick in sub-divisions may be sent in to the sudder station for medical treatment, 2067.

Civil surgeons are to supply officers in charge with cholera medicines and simple directions for using them, *id.*

SUB-DIVISIONS, RULES FOR THE GUIDANCE OF OFFICERS IN CHARGE OF.—*Continued.*

If with full powers of magistrate.

To hear and pass orders on all reports submitted by the police, 591.

To receive petitions, *id*

To decide or commit all cases brought before them, except such as the magistrate thinks proper to call for and decide, *id.*

To adhere strictly to the regulations, and to the rules and orders of the sudder court and the superintendent of police, *id.*

To avoid all unnecessary detention of parties, 592.

To render themselves freely accessible to people of all classes; and to listen to their communications with temper and consideration, *id.*

To be as much as possible on the move, investigating serious cases on the spot, visiting the thanas, &c., *id.*

To take measures for the suppression of crime and the maintenance of peace and good order, *id.*

In heinous cases to make weekly reports to the magistrate and to attend to his instructions, 593—magistrate to forward copies of the reports to the superintendent of police, *id.*

Dead bodies and wounded persons are to be sent to the station of the sub-division, if it is in a direct line between the place of occurrence and the sudder station; otherwise direct to the magistrate, 594—the civil surgeon will report to the officer in charge of the sub-division; who may request the magistrate to take the deposition of the medical officers, *id.*

Subordinate to two magistrates, to use their discretion as to priority in the execution of orders, 595.

Correspondence with superior authorities to be conducted through the magistrate, except in emergent cases, 596

Monthly statements to be despatched within 5, and the annual within 10 days, 597.

To note on each statement the number of times they proceeded into the mofussil on duty and the number of days they were absent, *id.*

Prisoners sentenced to simple imprisonment not exceeding one month to be retained at the sub-division station, 598—if for more than one month, and all laboring prisoners, and prisoners committed to the sessions, to be forwarded to the sudder station once a week, 599.

The period of imprisonment of persons sentenced in the sub-division to be calculated from the date of sentence, *id.*

To remit weekly, with a copy of the weekly cash acount, all money received as fines, deposits, &c., 600—deposits on account of diet money of witnesses are to be retained for repayment, *id.*—refunds of all other deposits, fines, &c. to be made by magistrate on roobakarees from the sub-divisions, 601—such officers to make no refunds or disbursements without special sanction, *id.*

Records of cases disposed of to be forwarded to the magistrate's office on the 1st January properly arranged, and accompanied with a catalogue, 602.

May suspend any of their amlah, or any police darogah, mohurrir, or jemadar, and forward the papers of the case through the magistrate to the superintendent of police for final orders, 603.

May dismiss and appoint burkundazes, chokeedars, and gorraits; subject to an appeal in the case of the former to the superintendent of police, and in the case of the latter to the magistrate, 604—monthly reports of such changes to be made to magistrate, *id.*—if the re-employment of such persons is improper, the papers are to be forwarded to the superintendent of police, *id.* similar report of police officers fined or suspended to be sent monthly to magistrate, 605.

Not to issue any general or circular orders to the police without the approval of the magistrate and superintendent of police, 606.

When appointing any ministerial officer, or any police thanadar, mohurrir, or jemadar, to take the deposition of the nominee in open cutcherry as to his residence, former employment, relationship, &c., and to forward such statement to the magistrate, 607.

What books and registers they are required to keep at all times ready, for the magistrate's inspection, 608—rules for preparing them, *id.*

To sign a daily voucher for the prisoner's rations, and to superscribe it with the number of the prisoners in their own hand-writing, *id.*—on the 1st of each month to forward a list of the prisoners in confinement on each day of the month, *id.*—and also a memorandum of the number of prisoners in confinement, or in transit, and the number of escapes and death, *id.*—the magistrate to enter these memoranda at the foot of their monthly statements, *id.*

If with special powers.

To hear and pass orders on all police reports, 609.

To report all heinous offences immediately to the magistrate; but to pass necessary orders at the same time, and to proceed to the spot whenever practicable, *id.*

To take evidence in all cases of felony and misdemeanor, which are unaggravated though beyond their competence; if the case is not proved to dismiss the witnesses, and to keep the defendants for the orders of the magistrate; if the case is proved, to forward at once the prisoners with the papers, 610.

To forward to the magistrate all persons punishable by stripes for petty thefts, *id.*

SUBORNATION OF PERJURY. See PERJURY.

SUBPŒNA

Form of, to be used by police officers. Appendix A, 15.

See WITNESSES.

SUBSISTENCE ALLOWANCE.

To indigent prosecutors and witnesses, at the sessions.

Daily allowance of two annas each to be paid to those, who appear to be actually in need of such assistance, while in attendance on the sessions, and while coming from and returning to their homes, 337.

Restricted to such persons as are really indigent, 338.

Magistrate to ascertain the actual attendance of the parties on the court; and to establish checks to guard against overcharge by native officers, 339.

Bills for diet money to be countersigned by the judge, *id.*

Judge to ascertain what witnesses are present, 340- and on the termination of the trial to demand from the magistrate's nazir a statement of the diet money, and to cause the balance due to be paid to the persons in his presence, *id.*

Contingent bills for, must be sanctioned by the session judge, 1415.

To witnesses in petty cases.

No process to be issued, unless the complainant deposits a sufficient sum for the maintenance of witnesses, 341—to be regulated by magistrate according to the probable period of attendance, 341*a*.

Rate to be fixed by magistrate, at not less than one or more than three annas per day, 341.

Only required for persons residing more than five koss from the cutcherry, *id.*

Need not be lodged until the prosecutor takes out process, 342.

Witnesses not to be summoned until the magistrate is prepared to take up the case, *id.*

To be paid only for the period of absence from home, 343—surplus deposit to be returned, *id.*

Magistrate may direct further deposit if necessary, on pain of dismissal of case, 341*a*, 344.

These rules are applicable to petty offences only; in all other cases government is to pay the subsistence allowance, 345

SUBSISTENCE ALLOWANCE.—*Continued.*

To witnesses in petty cases.—Continued.

If a complainant evades payment by misrepresentation of the case, he is to be held accountable for whatever sum appears due, 345.

Nazir to keep an accurate and particular account of all sums received and disbursed by him on such account, 346.

Magistrate to conform strictly to these rules, 347—indigent witnesses are to be supported in all cases, whether before the sessions or otherwise, either by the prosecutor or the state, *id.*

To prisoners discharged.

After an imprisonment of six months and upwards, a sum sufficient to maintain them for one month is to be given to those who appear in need of such assistance, 2284.

In no case to exceed five rupees; and as much less as is consistent with the object in view, *id.*

Miscellaneous.

Magistrate to prevent illegal exaction of, by muzkooree peons under the name or pretence of tullubana, 1082.

Burkundaz, or other officer receiving wages from government, demanding or receiving, while serving criminal process, may be compelled by a criminal prosecution, or a civil action, to refund the amount received, besides being liable to dismission, 1072.

In forwarding indigent prisoners to the magistrate, the darogah may advance such amount for diet allowance, as is necessary for their way-charges, not exceeding the rate of one anna per diem, 1789.

SUDDER AMEENS.

Liable to a criminal prosecution (in addition to a civil action) for corruption, extortion, or other misdemeanor; and to fine and imprisonment on conviction before the sessions court, 3218.

But not liable for want of form, or for error in proceedings and judgments, *id.*

Such cases are cognizable in the first instance only by the civil judge, 3219—and no process is to be issued without his assent, 3218—the prosecution may be conducted by the complainant before the magistrate; or the judge may direct the government vakeel to prosecute; but the judge cannot direct the commitment, 3219.

Duties in the foujdaree court. See LAW OFFICERS AND NATIVE JUDGES.

SUICIDE.

The desire of the party slain to be put to death is no justification of wilful homicide, 2882.

A Hindoo is liable to punishment for aiding in the suicide of a leper, 2883.

Precedents in cases of assisting in suicide: to relieve persons suffering from leprosy, 2944—to intimidate persons from executing a decree of court, *id.*

In case of suicide by a prisoner in jail, an inquest is to be held, and the result reported to the session judge, 2043.

SUITS IN SUPREME COURT.

Against officers of government for acts done in the discharge of public duty, responsibility for payment of costs, 526*a*.

SUMMARY SUITS FOR POSSESSION OF LAND. See DISPOSSESSION.

SUMMONS.

When to be issued.

In bailable offences, not requiring the immediate apprehension of the accused, upon the truth of the complaint being deposed to by the complainant or some credible person, the magistrate is to issue a summons specifying the offence charged and requiring the accused to appear in person or by attorney, 239—bail may be required if necessary, *id.*—so, police officers may issue in bailable cases cognizable by them, 250.

SUMMONS.—*Continued.*

When to be issued.—Continued.

Warrant to be issued if the accused neglects the summons, 240, 252.

Before issuing process the magistrate is to satisfy himself of the grounds of the charge by examining the prosecutor; and if he distrusts the truth of the charge by examining the witnesses, 246.

It is incorrect to summon one defendant in the first instance postponing the summons of the others until the evidence is taken, 247.

Every precaution to be adopted to prevent indiscriminate summons, *id.*—measures taken by a magistrate to avoid such on the part of his subordinates, 248.

How to be issued.

See PROCESSES, *summons.*

SUNDAYS.

Convicts are not to be employed on Sundays, except on urgent occasions, 2181—and at all events a part of Sunday is to be allowed to them for cleanliness, *id.*—but care is to be taken that the indulgence is not abused, *id.*

SUPERINTENDENT OF POLICE. See POLICE OFFICERS

SUPERINTENDENT OF POLICE IN CAMPS.

Governor general in council may appoint a superintendent of police in the camp of the governor general, or the commander-in-chief, or the lieutenant-governor of the north-western provinces, 624.

In respect to offences committed in such camp, or on the line of march, such superintendent has concurrent criminal jurisdiction with the magistrate, 625.

Prisoners committed to the sessions or sentenced to imprisonment by him, are to be forwarded to the magistrate to give effect to such commitment or sentence, 626.

All officers subordinate to the magistrate are to assist the superintendent, 627.

Appeals from his decisions and orders lie to the session judge, 628.

SUPREME COURT.

Execution of process within the limits of. See PROCESSES.

Aid to be given to process of. See PROCESSES.

Suits in, against officers of government for acts done in the discharge of public duty, responsibility for payment of costs, 526*a*.

SURETY. See SECURITY.

SURGEON, CIVIL.

Magistrate sending bodies to, for examination, to furnish them with all available information regarding the alleged cause of death, 2867.

In the case of a wounded person, sent by the magistrate for examination as to the wounds, the surgeon is to decide whether such person is to be placed in the hospital for treatment or not, 2808.

In sessions trials, it is not sufficient to require a written report of the case from the civil surgeon; his evidence must invariably be taken on oath, 780.

To visit the hospital daily, and the jail weekly; and to report to the magistrate on the health of the prisoners, their food, the cleanliness of the jail, and other points connected with the care and condition of the prisoners, 2019—in his weekly inspection he is to see that all prisoners really sick are sent in to the hospital, 2062.

To transmit quarterly to the medical board statements of the sick and of casualties in the jail, 2068—and to furnish the magistrate with a half-yearly report on the state of the prisoners. Appendix E, 29—magistrates are to give the assistance of their writers and mohurrirs to the surgeons to enable them to prepare these reports, 2069.

To give explanation if the mortality in the jail during the month exceeds one per cent; and in cases of very extra-

SURGEON, CIVIL.—*Continued.*

ordinary mortality, to make a special report for transmission to government, 2070.

May order the fetters of a prisoner in hospital to be removed in cases of sores or illness, 2065.

To supply officers in charge of sub-divisions with cholera medicines and simple directions for using them, 2067.

Inquests are to be held by the native doctor on the bodies of all prisoners who die in jail, 2115—and the surgeon is to examine all doubtful cases, 2116.

To approve of the musters of the provisions deposited by the jail contractor, 2071.

To see the prisoners at a meal at least once a week; his visits to be at irregular intervals and unannounced, *id.*—to keep a public register of his visits, and to enter therein remarks on the dieting; session judge to see that the register is kept up, *id.*

Prisoners sentenced to stripes to be examined by the surgeon previous to punishment, 2288.

In applications for the release of prisoners from jail on account of blindness, the surgeon is to record his opinion as to the origin of the calamity, and whether there is reason to suspect that it was designedly produced, 2290.

To examine prisoners on trial who are alleged to be insane, 98—and prisoners standing mute, 102.

Professional history of the cases of insane persons to be kept by the surgeon, 3429*a*—to write remarks on the descriptive rolls of persons forwarded to the insane hospital, 3434.

SUSPECTED PERSONS. See BAD CHARACTER, and VAGRANTS.

SUSPECTED PROPERTY. See STOLEN PROPERTY, *search for.*

SUSPENSION OF POLICE OFFICERS.

If a darogah is suspended, the acting officer is to receive the full salary, 1569.

The suspended darogah, if acquitted, may be paid the whole or any part of the back salary, *id.*

If a darogah of one thana is put in charge also of a contiguous thana, the magistrate is to determine whether he is to receive any and what portion of the salary of the suspended officer, 1570.

Any extra expenses occasioned by the neglect of an officer to obey a superior court's order for the restoration of a suspended officer, are to be retrenched from his salary, 1571.

SUSPICION.

No conviction can be had on suspicion only or weak presumption; the evidence must amount to strong and violent presumption, 416—the session judge should always require specific futwa as to the nature and degree of presumption, 845.

How far presumptive evidence is sufficient in Mahomedan law, 427.

See EVIDENCE.

The circumstances which first induced suspicion to attach to the prisoners and ultimately caused their apprehension, are to be noted in the calendar or commitment, 667*a*.

SUSPICIOUS DEATHS.

Information required from all persons regarding, 1861—penalty for neglect, *id.*

Inquiries to be made in cases of. See POLICE OFFICERS' DUTIES, *inquests.*

SUSPICIOUS PERSONS. See BAD CHARACTER, and VAGRANTS.

SUSPICIOUS PROPERTY. See STOLEN PROPERTY, *search for.*

SUTTEE.

Suttees are illegal, 2963.

All landholders, &c., and head-men of villages are responsible for immediate information of intended suttees, 2964—penalty in case of neglect, *id.*—police to report all cases of such neglect, 2965.

SUTTEE.—*Continued.*

Police officers how to act on receiving information of an intended suttee, 2966—to warn the persons assembled of the consequences, to use all lawful means to prevent it, and to apprehend the principal persons aiding and abetting, *id.*—to associate respectable Hindoos with themselves in these endeavours, 2967.

Darogah to report the cause if he does not proceed himself to the spot; and to explain if the police do not arrive in time, 2967.

If the police officers do not hear of the suttee until after it has taken place, or if they do not arrive in time, they are to make enquiries as in other cases of unnatural death, 2968—but in such case they are not to arrest the persons implicated, 2969.

Force is not to be employed to prevent a suttee until mild measures have proved ineffectual; and prisoners are to be treated indulgently, 2970.

Magistrate to adopt measures for bringing the parties to trial, 2971.

Persons convicted of aiding and abetting in suttee are liable to fine and imprisonment at the discretion of the sessions court, 2972—no justification that the party sacrificed desired to be put to death, *id.*

Labor may be adjudged, 2973.

Prisoners may be admitted to bail, 2974—if not admitted to bail, to be confined in the civil jail, 2975.

The nizamut adawlut may pass sentence of death, when violence or compulsion has been used, or when the widow was intoxicated or stupified, 2976.

Precedent, 2977.

SWINDLING. See FRAUD.

TALOOKDARS. See LANDHOLDERS.

TANKS.

Magistrate may compel the owners of tanks, adjacent to any public thoroughfares, to fence them so as to prevent danger to the public, 2457.

TAX, CHOKEEDAREE. See CHOKEEDARS.

TAX, ILLEGAL.

Exaction of unauthorized, how punishable, 3224—meaning of term "exact," 3225.

It is different if zumeendar collects a cess established by custom, and sanctioned by the revenue authorities, 3226—as choongee, 3227.

TAZEER.

Definition of, 41—incurred by any offence not subject to a specific legal penalty, *id.*

May be inflicted upon strong presumption, but not without a judicial sentence, 42—other conditions requisite to a legal trial and conviction under, *id.*

Punishments awarded upon a conviction for, include private and public reprimands and tusheer, a temporary sequestration of property, stripes, imprisonment, and even capital punishment, *id.*

General principle of, 43.

TEHSILDARS.

Police powers may be entrusted to them in the N.W. Provinces. See POLICE OFFICERS.

Making use of public money entrusted to them, 2009—how punishable, 2010—precedents, 3193, 3194. See EMBEZZLEMENT.

TEKORAHS.

The system of compelling all dagees and tekorahs to sleep under the surveillance of the police, or zumeendars, is prohibited, 1710.

TENANTS.

In assisting in the enforcement of a writ of the supreme court, the magistrates are to respect the legal tenures and rights of the tenants, 1219.

TENANTS.—*Continued.*

Magistrate to discourage and punish the unfounded complaints made by under-tenants against distrainers and persons collecting rents, or causing them to be summoned as witnesses in cases of which they are ignorant, 1201. See DISTRAINT AND ATTACHMENT.

Landholders have the power of compelling the attendance of their tenants for the adjustment of their rents, or for any other just purpose, or for measuring their lands, 1895—no previous application to a court of justice is necessary, and parties opposing them are liable to damages in the civil court and to punishment in the criminal courts for breach of the peace, *id.*—but landholders are answerable for the abuse or unjust exercise of this power, and are liable in the civil courts for damages, *id.*—the nizamut adawlut refused to define the degree of power meant to be conferred on the landholders by this rule, 1896—magistrate must decide in each case from the evidence, *id.*

Landholders are prohibited from confining or inflicting corporal punishment on their tenants; and may be prosecuted for such in the civil or criminal court, 1893—police to report all instances of landholders and others using stocks or other instruments of restraint for the purpose of confining their tenants, 1894.

Disputes for possession of their tenures. See DISPOSSESSION.

TENTS.

Government will sanction the purchase of tents for magistrates when necessary, 499.

If an assistant magistrate, appointed to a sub-division, requires a tent, a report is to be made to the superintendent of police, 500.

THANAS. See POLICE OFFICERS

THEFT AND ROBBERY

Definitions.

The absence of ownership in the thing stolen does not affect the guilt of the thief, 3075.

If a servant clandestinely removes from his employer's residence property placed under his custody with intent to appropriate it, it is theft, 3076—but if he appropriates it without removing it, it is embezzlement, *id.*

Appropriation by the crew of a stranded vessel of the property of a passenger was considered theft, 3077.

Police.

Police officers cannot investigate a simple theft, or apprehend persons suspected of such offence, without a written request on the part of the person injured requesting that a search be made for the property or the offender, or an order from the magistrate, 1723—a deposition by the plaintiff in person is not sufficient; there must be a written petition with a specific request, 1721—without such petition the proceedings are void, 1724*a*.

Magistrate may always direct enquiry to be made, 1729—by what rules he should be guided in the exercise of this discretion, 1729*n*, 1724*b*

The suffering party need not report unaggravated case, unless as a landholder, 1725.

But the chokeedars must report all cases which come to their knowledge, 1726.

Magistrate should endeavour to obtain information from other sources also, *id.*

Police officers may postpone apprehending persons charged with theft unattended with personal violence, pending the magistrate's orders, if the injured person so requests, and if the accused has not been previously guilty or suspected of theft, 1727—but every such case must be reported to the magistrate, who is to decide whether it is to be investigated, 1728—by what circumstances the discretion of the magistrate is to be guided, 1730.

Commitment.

Magistrate may offer a conditional pardon to accomplices in aggravated cases of, 280.

THEFT AND ROBBERY.—*Continued.*

Commitment.—Continued.

Prisoners are not admissible to bail, 1133, 1139

Cases which *must* be committed; if accompanied with murder or attempt to commit murder, or wounding or other aggravating act of personal violence, 3078—or if the amount or value stolen exceeds 300 rupees, 3079.

Cases which *may* be committed; if the prisoners are of notoriously bad character, or have been previously convicted of a heinous offence, or if from *any* other peculiar circumstances he considers the punishment within his competence insufficient, 3080—a previous conviction of theft not exceeding 10 rupees does not bring the case within this category, 3081—in such case the express circumstance of aggravation must be mentioned in the roobakaree of commitment, 3082—and by the session judge in his abstract statement of sentences passed without reference, *id.*—judge how to proceed if no special grounds are recorded in the roobakaree, or if he considers the grounds insufficient, 3083, 697.

Magistrate need not commit, in a second case not exceeding 300 rupees if the first case although above 10 did not exceed 300 rupees, 3084—in a second case of cattle stealing, 3085—in an unaggravated case of theft by a servant above 50 but not exceeding 300 rupees, 3086.

In all other cases the magistrate *cannot* commit, 3087

The declaration of the prosecutor on oath is in the first instance to determine the value of the property stolen; but magistrate may make enquiries, 3088.

Cases within the competence of the magistrate, and penalties.

May award imprisonment with hard labor for 3 years, if the amount or value stolen exceeds 50 rupees; if the thief has been previously convicted of a heinous offence; if the thief was at the time employed as a watchman, guard, or police officer; or as a servant of the person robbed; or was employed in the house robbed; and in all cases of cattle stealing, 3089—the term cattle includes all domestic quadrupeds, 3090—a previous conviction of theft not exceeding 10 rupees brings the case within this category, 3091—an incorrigible thief is liable under this rule, 3092—and it applies to private watchmen as well as to those in the public service, 3139—it is no aggravation that the prisoner was formerly employed as a watchman; and the magistrate is to note in his statement whether he was actually so employed at the time of committing the offence, 3093.

In other cases of theft not included in the above, the magistrate may award six months' imprisonment and stripes, 3094—commutable to imprisonment for one year, 3095—in unaggravated cases the sentence cannot be more severe, 3096.

Corporal punishment, not exceeding 30 stripes, *may* be awarded to an adult if the value of the property does not exceed 50 rupees, 3097—or imprisonment at the option of the magistrate, 3100—but if in such case the age of the prisoner does not exceed 18 years, the magistrate *must* award corporal punishment not exceeding 10 stripes with a light ratan, 3098, 3099—and he cannot award imprisonment, 3100—the same rule applies to the case of a prisoner convicted of a second offence not exceeding 50 rupees, who has previously been punished by stripes, 3101—*attempts* to commit theft do not fall within these provisions, 3101*a*—no female is to be subject to corporal punishment, 3102—if stripes are inflicted no other punishment can be superadded, *id.*—the stripes must be inflicted in the presence of the magistrate, *id.*—or an officer exercising the full powers of a magistrate, 3103—and such officers alone can award stripes, *id.*

If the prisoner is charged with two or more distinct offences he is to refrain from passing any sentence, until he has completed the proceedings in all the cases, 3104—whether the thefts charged are petty cases or aggravated but within his competence, 3107—in case of conviction of more than one of the offences charged he may award imprisonment for 3 years, if he considers such punishment sufficient, 3105,

THEFT AND ROBBERY.—*Continued.*

Cases within the competence of the magistrate, &c.—Continued.

3108—if it appears insufficient he is to commit for each offence, 3106, 3109.

Sentence of labor is not commutable to fine, 929.

Cases within the cognizance of the superior courts, and penalties.

On conviction of having belonged to a wandering gang of thieves, not being thugs or dacoits; imprisonment for 7 years, 3109*a*—persons accused of belonging to such gang, or of receiving property stolen by such gang, may be committed by any magistrate and tried by any sessions court, 3109*b*—no futwa is to be taken on the trial of such offences, 3109*a*.

On conviction of murder in prosecution of theft or robbery; sentence of death, as in other cases of murder, by nizamut adawlut, 3111.

On conviction of theft or robbery accompanied with an attempt to murder, or with corporal injury endangering life; imprisonment and transportation for life, 3112—such trials must be referred, and the judge may state grounds for mitigation, *id.*—in such cases if the futwa convicts, even on strong presumption, the judge must pass the prescribed sentence and refer the trial, 3113—as where the thieves took out an infant and exposed it in the adjoining garden, 3114.

All cases of administering *poisonous* drugs with intent to rob come within the above provisions, as cases of corporal injury endangering life; the judge must pass sentence and refer the trial, 3115—but they do not include the offence of administering merely *intoxicating* drugs not endangering life, 3118—nor is the latter offence included in the provisions below for theft attended with corporal injury in a less degree, 3120—a particular form of indictment to be used in such cases specifying whether the drugs were poisonous or intoxicating, 3119.

If persons accused of robbery and murder appear to have been engaged in a systematic combination for such purposes, they are to be made over to the thuggee officers, 3117—and all persons committed on a charge of poisoning may be tried by the thuggee judge, 3116.

On conviction of theft or robbery attended with wounding, or other corporal injury not endangering life; imprisonment in banishment for 16 years, 3121.

These provisions have no reference to cases of theft unaccompanied with wounding, or other corporal injury, or an attempt to commit murder, 3122.

Provisions regarding robbery by open violence are not applicable to cases of theft or robbery without open violence, 3123.

In aggravated cases of theft not included in the foregoing provisions the sessions courts may award imprisonment for 9 years, 3124.

Police officers, and guards, or watchmen, private as well as public, convicted of theft, are liable to the extent of the discretionary punishment within the power of the sessions courts and nizamut adawlut respectively, 3125.

Judge to explain in his abstract statement of prisoners punished without reference, whenever the sentence passed exceeds imprisonment for 6 years, 3126—but this is not meant to fix a maximum sentence for unaggravated cases, *id.*

Precedents.

Theft attended with murder, 3127 with accidental wounding, *id.*—by a relation, 3128—by a servant, *id.*—by the crew of a stranded vessel, *id.*—acquittal and disposal of property, *id.*

Highway robbery not amounting to robbery by open violence, attended with murder, 3129—with intent to kill, *id.*—with personal violence, *id.*—without aggravation, *id.*

Plundering, attended with murder, 3130—unaggravated, *id.*

Administering poisonous or deleterious drugs in prosecution of theft, death ensuing, 3131—death not ensuing, *id.*

THEFT OF THE PERSON. See ABDUCTION, CHILD-STEALING, EMIGRANTS, MISSING PERSONS, and SLAVERY.

THIEVES, KILLING.

Persons wounding or slaying robbers or thieves in their own defence or in defence of their property are not to be proceeded against without the orders of the magistrate, 2879.

Police officers, who, having the power to arrest him, wound or slay a robber in endeavouring to apprehend him, are held guiltless of any criminal act, 2880—but no allowance is made for a person slaying a robber after he has been taken into safe custody, 2932—precedents, *id.*

THUGGEE.

A "thug" is one who has at any time habitually associated with any others for the purpose of committing, by means intended or likely to cause death, the offence of child-stealing, or robbery not amounting to dacoity, 2949*a*—definition of the word "thuggee," and of the expression "murder by thuggee," *id.*

All proceedings to be written in Oordoo or Hindostanee, 2949—but depositions and confessions of thugs are to be taken down in the language best understood by them, *id.*

Persons convicted of having belonged to a gang of thugs, either within or without the Company's territories, are to be punished with imprisonment for life with hard labor, 2950—in transportation, unless there are special reasons for not considering the prisoner a fit subject for transportation, 2951.

Persons charged with murder by thuggee, or with having belonged to a gang of thugs, either within or without the Company's territories, may be committed by any magistrate, 2952—persons charged with having belonged to a gang of thugs may be tried by any sessions court, 2953—but not for specific acts of murder by thuggee and plunder of property, committed beyond the Company's territories, without the previous sanction of government, 2954—persons accused of murder by thuggee, or of receiving property obtained by thuggee, may be tried by any sessions court, 2955.

The appointment of a special thuggee judge does not bar the jurisdiction of the ordinary courts; but in such cases the ordinary courts should abstain from trying the commitments, 2956.

Persons committed on a charge of poisoning may be tried by the special thuggee judge, 3116.

If persons accused of robbery and murder appear to have been engaged in a systematic combination for such purposes, they are to be made over to the thuggee officers, 3117.

Futwa not to be taken on a trial for having belonged to a gang of thugs, 2957—but a futwa, or the verdict of a jury, &c., must be taken on a trial for specific acts of murder and thuggee, 2958.

Qualified pardon may be offered to any thug on condition of his making a full and ingenuous confession; but such offer is not to include a hope that he will ever be set at liberty; it is to extend only to exemption from death and transportation, and to indulgences in confinement, 2959—government will always confirm such promise; but every approver must be committed for trial and convicted of having belonged to a gang of thugs, in order to ensure the legality of his detention and imprisonment for life, *id.*—before commitment a faithful narrative of the prisoner's life of crime with all particulars is to be put on record, and a few approvers are to be examined as to his being a real thug, *id.*—the offer and acceptance of pardon by the approver must be affixed to the record of each trial, 2960.

Police officers are to give every assistance to the officers of the thuggee department, 2961.

Precedent, 2962.

TIME.

Calculation of periods allowed for official acts, 1378.

TOLLS, COLLECTOR OF. See LOCAL NUISANCES, *rivers.*

TOWNS.

Police in. See POLICE OFFICERS, *establishments*, and CHOKEEDARS, *at sudder stations.*

Conservancy. See LOCAL IMPROVEMENTS, *municipal committees.*

TRADING ESTABLISHMENTS.

Covenanted servants not to take part in the management of, 3451.

Police officers prohibited from keeping, within the limits of their thana, 1697.

TRANSLATIONS.

In the lower provinces, the court does not require translations of proceedings in referred trials, except as regards Orissa, and except in trials from all districts in which the judge recommends a capital sentence, 958—in such cases the translations are to be made in Oordoo, and submitted in a separate nuthee, *id.*

In the western provinces, the court does not require translations, except when the dialect in use is peculiar or corrupt, in which case they must be written in a correct Oordoo style and a fair and legible character, *id.*—if uncommon words or obvious provincialisms occur in evidence, the corresponding term in Persian is to be noted in the margin, *id.*

Original confessions taken down in peculiar dialects should be accompanied by translations, 464. See OFFICE, RULES OF, *proceedings.*

TRANSPORTATION, AND BANISHMENT.

The nizamut adawlut may order any prisoner sentenced to imprisonment for life to be transported beyond sea, 1042—and whenever the court sentences any offender to imprisonment for life, it is at the same time to sentence him to transportation for life, unless from special reasons, which are to be recorded, it considers him not a proper subject for transportation, 1043.

If a session judge sentences an offender to, or recommends a sentence of, imprisonment for life, a single judge of the nizamut adawlut must sentence him to transportation for life, unless there are special reasons against it, 1044—but session judge is always to adjudge transportation for life, if he considers the prisoner, upon whom he passes sentence of imprisonment for life, a proper object of transportation, 1045—if the prisoner is liable to a sentence of perpetual imprisonment, the trial must be referred, 860, 865.

Transportation beyond sea is restricted to convicts sentenced to confinement for life, 1045.

The nizamut adawlut cannot exempt from transportation, except in the way of mitigation, a person convicted of an offence for which the regulations specifically prescribe that punishment, 1046—as in the case of murder by thuggee, 2962.

Transportation is a more severe punishment than imprisonment for life, 1047.

Convicts under sentence of transportation for life, escaping from beyond sea and returning to the Company's territories, are liable to a sentence of death, 2136—futwa must be taken in such case, 2137—precedents, 2138, 2139, 2140.

Prisoners sentenced to perpetual imprisonment in Allipore jail may apply to be transported, 2276—and government may commute the sentence accordingly, 2277—punishment for return from transportation in such case, 2278.

Convicts sentenced to transportation, where to be sent; and rules for their transfer to other penal settlements, 2275.

Convicts confined for life but not considered proper objects of transportation, and convicts imprisoned for a limited period, may be sentenced to banishment, 1048.

Magistrate cannot sentence vagrants, or persons convicted of specific offences to banishment, 1049—but a person confined in default of security may be released on his voluntary offer or consent to quit the jurisdiction, 2677.

TRANSPORTATION, AND BANISHMENT.—*Continued.*

For rules for removal of prisoners under sentence of, see JAIL, *removal of prisoners under sentence.*

TRAVELLERS.

Moving about in large bodies under suspicious circumstances. See VAGRANTS.

TRAVELLING ALLOWANCES.

May be drawn by magistrate at the rate of 5 rupees per diem, 498—bills to be countersigned by the superintendent of police, *id.*

Deputy magistrates *in the lower provinces* in charge of subdivisions may draw 3 rupees per diem whilst moving about their jurisdiction; those at the sudder stations drawing salary at 200 rupees per mensem are allowed 5 rupees per diem when deputed to the interior, 590*a*.

Law officers may draw 2 rupees per diem, if their salary exceeds 100, and is not above 200 rupees per mensem; if above 200, they may draw 3 rupees per diem, 1977.

All amlahs are allowed three-tenths of their salary; but, if required to proceed by dawk, 4 annas per mile, 1962, 1963.

Darogahs deputed to other and distant thanas are allowed travelling expenses; and also if on extraordinary occasions they have to pursue criminals for a great distance, 1575.

TREASON. See STATE OFFENCES.

TREASURE, DESPATCHES OF.

Police darogahs to afford assistance, on application from the revenue officers, for the safe custody and conveyance of, 1804—and to allow such despatches to be deposited at night for security in the thana buildings, *id.*

Police officers are also, as far as possible, to protect despatches of treasure belonging to bankers and merchants, on application from the person in charge, 1805.

TREASURER.

Allowed no profit on the exchange of rupees into pice, 2073.

See NATIVE MINISTERIAL OFFICERS, and ACCOUNTS.

TRESPASS.

Slight.—Complaint of, must in the first instance be preferred to magistrate, 241—and may not be referred to the police officers for report, 242—nor can the police officers take cognizance of such cases, 1711—no process is to be issued until diet-money is deposited, 341, 341*a*—how punishable, 3242.

Cattle.—Police officers not to levy fines on account of, 3243—power of magistrate to take judicial cognizance of, 3244—how far police officers can interfere in, 3245—penalty for damaging indigo-crops by allowing, 3246.

TRIALS.

Forms and conduct of, by sessions court. See SESSIONS, and SENTENCES BY SESSION JUDGE.

Held without law officer. See SESSIONS.

Postponed. See POSTPONED TRIALS.

TRIALS REFERRED AND CALLED FOR.

What are referrible.

All trials in which the prisoners are convicted and liable to a sentence of perpetual imprisonment or death, must be referred, 860, 865.

Any case in which the judge considers the sentence within his competence inadequate to the guilt of the prisoner, may be referred, 861.

If the judge disapproves of any part of the proceedings held on a trial, or of the futwa, he must refer, 862—unless he is expressly authorized by the regulations to pass sentence notwithstanding such futwa, 865—if the law officer acquits, and the judge convicts of the whole or any part of the charge, he is not to pass sentence but to refer the trial, 875—if the law officer convicts, but declares the prisoner not liable to any punishment, 870—if the judge convicts on only one count, and the law officer only on the other count,

TRIALS REFERRED AND CALLED FOR.—*Continued.*

What are referrible.—Continued.

876—if the judge differs from the futwa on any other grounds than those especially provided for in the regulations, 870—if the judge considers the exposition of the law officer on any point of law, arising during the trial, to be contrary to the principles of natural justice, he is to refer without passing sentence, 871—if the law officer rejects the evidence on account of the religious persuasion of the witnesses, or on any other ground of exception in the Mahomedan rules of evidence which appear to the judge unreasonable and insufficient, and the conviction of the prisoner depends principally upon such evidence, the judge is to refer the trial without passing sentence, 872, 873, 874.

If a trial is held without the attendance or futwa of the law officer under the special order of government, 820.

If a trial is held with the assistance of a punchaet, assessors, or a jury, instead of a law officer, and the crime, of which the prisoner is convicted, be one which the judge is not specifically empowered by the regulations to punish, he is to refer without passing sentence, 823.

Examples: in a case of robbery with attempt to murder the trial must be referred, 877, 3112 so, in a case of burglary with corporal injury endangering life, 878, 3112—so, in case of rape, 3010—but not for the mere attempt, 3011

What are not referrible.

A difference of opinion as to the aggravated character of an offence is not a sufficient ground of reference, 863.

It was held no ground of reference in a case of justifiable homicide that the prisoner had concealed the body of the deceased, 863*a*.

Although the trial of a particular offence (as dacoity with murder) must be referred, it is not necessary to refer the trial of an accomplice convicted of privity only, 864.

A difference of opinion between the judge and the jury or assessors is no ground of reference, 828.

The case of a chokeedar convicted of dacoity is not necessarily referrible, 879, 3056, 3061.

A conviction on a charge of administering intoxicating drugs is not necessarily referrible, 880, 3112, 3118.

If the judge concurs with the law officer in a case of wounding with intent to kill, he must pass sentence and cannot refer, 881, 2813—unless he considers the punishment within his competence inadequate, 861.

If no minimum of punishment is prescribed, the case cannot be referred for mitigation of sentence, 3325.

Sentence by session judge in referrible trials.

Sentence not to be passed (except for the acquittal and discharge of prisoners not convicted), if the judge disapproves of the futwa, or if any prisoner convicted at the trial is liable to a sentence of death, 866.

In other cases sentence is to be passed; but in referrible trials such sentence is not to be carried into execution until confirmed by the nizamut adawlut, *id.*

If a trial is referred as to the principal only, though an accomplice has been tried and convicted at the same time, the sentence passed upon the latter is not to be carried into effect until confirmed by the nizamut adawlut, *id.* but if the accomplice be acquitted, he is to be released at once although the trial is referred, *id.*

If the judge differs from the law officer as to some of the prisoners only, he is to pass sentence on those regarding whom he concurs, and refer the trial as to the others, 867—but such sentence is not to be executed until the receipt of the orders of the nizamut adawlut, who may revise the whole proceedings, 868—the judge must pass sentence upon those in whose conviction he concurs, but must suspend the execution of it, 869

When to be forwarded.

In cases involving capital punishment, the trial is to be transmitted within 10 days, 948

TRIALS REFERRED AND CALLED FOR.—*Continued.*

When to be forwarded.—Continued.

Cases involving capital punishment are to be transmitted first, 949.

Judge to be guided by the forms and instructions which he receives from the nizamut adawlut, 950.

The judge may admit the prisoners to bail; and if they cannot provide it, he is to transmit the proceedings with the least possible delay for the early sentence or order of the court, 951—the superintendent of police cannot direct that the prisoner be held to bail pending the reference, 1146—if a prisoner on bail is not apprehended until some time after the date of his sentence by the nizamut adawlut, a special report is to be made for their orders as to the date from which the sentence is to commence, 1147

A judge on circuit is to transmit referrible trials from the station at which they are held, unless the number of papers to be copied would materially impede the circuit; in the latter case he is to report what referrible trials are so deferred, the dates on which they were held, and how soon the records will be transmitted, 952—the transmission of trials is never to be delayed beyond ten days from his arrival at the next station, 952.

Delay in forwarding trials is to be avoided, and is inexcusable, 953

Record.

A complete and exact counterpart of the original record of all proceedings held and papers received, is to be forwarded with an English letter stating the opinion of the judge, 954—the record to be authenticated by the signature of the judge and the seal of the law officer, and to include all the proceedings with every examination, exhibit, and material paper taken by or delivered to the court, *id.*—the whole of the magistrate's proceedings are also to be annexed, *id.*—preparation of list of papers to be carefully superintended, 959—form of, *id.*

Original confessions, &c. are to be transferred from the magistrate's proceedings to the copy of the record sent to the nizamut adawlut, attested copies being retained on the original record, 954, 956.

In trials for murder the original inquest is always to be forwarded, or the reason of omission to be noted in the letter, 954*a*.

In cases depending on the discovery of stolen property by police officers on a search, the original chalan of the property is to be entered on the sessions record, 1178.

No papers are to be submitted with the record, which relate exclusively to prisoners regarding whom the reference is not made, as their defence or the evidence for their defence, 962*a*.

Copies only of the sessions proceedings are to be sent, but the magistrate's proceedings in original, 955.

The magistrate's amlah are to assist in making the necessary copies, and the judge may employ extra mohurrirs if necessary, *id.*—care to be taken in transcribing the papers, 957.

In the lower provinces, except as regards Orissa, translations of the proceedings are required only in those cases, tried with the assistance of a law officer, in which the judge recommends a capital sentence; in such cases the translations are to be made in Oordoo, and submitted in a separate nuthee, 958.

In the western provinces, translations of the proceedings are required only in districts wherein peculiar or corrupt dialects are in use; they are to be written in a correct Oordoo style and a fair and legible character; wherever uncommon words or obvious provincialisms occur, the mohurrir is to note in the margin the equivalent term in Persian, *id.*

Original confessions, taken down in peculiar dialects, should be accompanied by translations, 464. See LANGUAGE.

Copies of the vernacular and English calendars are always to be placed with the nuthee, 959—in the latter a mark is

TRIALS REFERRED AND CALLED FOR.—*Continued.*

Record.—Continued.

to be placed against the names of witnesses examined, and a memorandum of witnesses summoned by the judge in addition to those in the calendar, *id.*

Particular attention is required to the arrangement of the record, and to the rules for its transmission, 968.

If magistrate requires a copy of the whole or of any part of his proceedings before their transmission to the nizamut, on account of some of the accused persons not having been apprehended, or from any other cause, he is to apply to the judge, who is to comply with such application, or to state his reasons for refusing it in his letter accompanying the trial, 960.

Letter.

Containing the opinion of the judge to be sent with the record, 961.

Form of letter, 962.

In the margin of the letter are to be entered:—the specification of the trial, 962—the name of the prosecutor, *id.*—the name, the age, and the dates of apprehension and commitment of each prisoner, 962, 963—in cases involving a sentence of death the name of the prisoner's father is to be specified, 966 the names of the prisoners to be written in the order in which they are brought forward for trial, 965—the names of those prisoners only to be given in regard to whom the reference is made, 962*a*—the charge, 962—the date of the perpetration of the offence, 963—the nature of the futwa, 962—and whether the prisoners are in jail or on bail, 964.

If the judge thinks that the prisoner has stated his age inaccurately, he is to specify in the record his opinion of the apparent age, 967.

The body of the letter is to contain a brief recapitulation of the prosecutor's statement, of the evidence for the prosecution, and of the defence; with the judge's concurrence with, or dissent from, the futwa; a distinct expression of his opinion as to the guilt or innocence of the prisoner, and of the specific crime established against him, 962.

The opinion of the judge as to the guilt or innocence of the prisoner must be clear and explicit, 969.

When a trial is referred, because the session judge differs from the law officer as to some of the prisoners only, he is to point out those parts of the proceedings or evidence which affect the prisoners in respect to whom the case is referred, 867.

The judge is to specify the punishment which he considers adequate to the crime established against the prisoner, 970—except, *in the western provinces*, in trials held with the assistance of a law officer, in which case he is merely to record his opinion of the guilt or innocence of the prisoner, and of their relative degrees of guilt if there is more than one prisoner, *id.*

If the judge recommends imprisonment for life, he is to state his opinion whether the imprisonment should be undergone in transportation or in the Alipore jail, 971.

When the judge refers a case as beyond his competence, or for an extension, mitigation or remission of punishment, he is to notice the same in his letter, and to state at large the grounds of his judgment, with such of the facts and circumstances as are necessary to explain the case of the prisoner regarding whom the reference is made, 972.

With the records of cases called for, the judge is to forward extracts from the statements relating thereto, 973—if some prisoners are punished and others released, an extract from each statement is required, *id.*—so, in trials postponed, *id.*

If the nizamut adawlut do not pass sentence within six months, the judge is to notice the same in his letter accompanying the monthly statements, stating certain particulars, 974.

TRISOOLEE PYCE.

Not to be received, 1454.

TROOPS.

Assistance to be given to troops on the line of march. See MARCHING.

Magistrate requiring aid of. See MAGISTRATE.

TRUST, BREACH OF. See FRAUD

TULLUBANA. See PEONS, and SUBSISTENCE ALLOWANCE.

TUSHEER.

Abolished, 944*a*.

TYPES, PRINTING. See PRINTING PRESSES.

UMPIRES. See PUNCHAET.

UNCLAIMED PROPERTY.

Belongs to government, whether cattle, boats, timbers, or other goods or chattels; and police officers are to forward all such property to the magistrate; or if not easily moved to make over charge of it, pending his orders, to the local zumeendar or head person of the village, 1189.

Unclaimed (ladâvee) property is not to be confounded with intestate (lawaris) property, 1190.

The disposal of unclaimed property rests with the magistrate, subject to the control of the superintendent of police and government, without any interference on the part of the civil court, 1190.

Intestate property is immediately to be made over to the civil judge, *id.*

Registers of such property to be kept in prescribed forms, 1191.

UNCOVENANTED JUDGES. See LAW OFFICERS AND NATIVE JUDGES.

Petitions of appeal are not to be referred for decision to deputy magistrates and uncovenanted judges exercising magisterial powers, 1289*a*.

UNFOUNDED CHARGES. See COMPLAINTS.

UNIFORM, MILITARY.

No person is allowed to dress his servants in the uniform of sepoys, 1810.

No person is allowed to wear such dress, 1811.

Civil authorities are not to clothe their servants in such dress, 1812.

Sepoys are not to wear their uniform while absent from their corps, unless on public service, 1813.

Persons disobeying these orders to be deprived of their dress by military commanding officers and magistrates, unless they are in the military service of the Company, in which case they are to be sent to their corps, 1814.

Police officers are to apprehend persons wearing military dress, 1814, 1815—or sepoys wearing their uniform while on leave, 1816.

Magistrate cannot issue a general order forbidding persons to carry arms, 1816*a*.

USE OF ANY LAND OR WATER.

Disputes concerning the right of, may be determined under Act IV. 1840, in favor of the public, of classes of persons, or of individuals, 2770.

If the right of use can be exercised at all times of the year, it must have been exercised within three months previous to the institution of the enquiry;—but if it exists at particular seasons, it must have been exercised without discontinuance, *id.*

If a bund constructed by a person on his own land is injurious to the property of another, the complaint would usually lie in the civil court; but magistrate might interfere to prevent a breach of the peace or serious injury to property, 2771.

UTTERING.

Penalty for uttering counterfeited stampt paper, coin, bank-notes, promissory notes, or other securities for money, 2482.

UTTERING.—*Continued.*

A person acquitted by the sessions court for uttering cannot be sentenced by the magistrate for having had the counterfeit coin in his possession, 2487. See COINING.
Penalty for uttering fabricated deeds and papers, 3323. See FORGERY.

VACATIONS.

The trial of cases committed and ready for trial previous to the dusserah or mohurrum vacation are to be completed although the vacation supervenes in the course of it, 753.
The sessions court should be closed only when a total cessation from all business is necessary and usual, *id.*

VAGRANTS.

Police to apprehend all vagrants and suspicious persons, wandering about in parties or individually, without a fixed abode; or who, though resident in a particular place, have no ostensible means of honest livelihood and who cannot give a satisfactory account of themselves, 2672.
Police officers to make summary enquiry; and if necessary to attach their persons; and to forward them to the magistrate, unless they can give a satisfactory account of their names, connexions, place of residence, occupation and means of livelihood, 2673.
If their names cannot be ascertained, the darogah may apprehend them without a specific warrant, 2674—if necessary he may apply to the local landholder, or to the adjacent thana, or to the sudder station, for assistance, *id.*
If the suspicions against such persons prove unfounded, the police are to admit them to bail, and report the circumstances for the magistrate's order without sending them to the station, 2675.
Magistrate to examine such persons on oath, and also persons having any knowledge of their circumstances; and if they appear disorderly or ill-disposed, to require them to give security for good behaviour, 2676—or in default to be imprisoned for a definite period, 2638—or until some creditable person agrees to entertain them in service; or the magistrate is satisfied that they will endeavour to obtain an honest livelihood, 2676.
Such persons escaping from jail punishable by imprisonment with hard labor for six months, 2676.
Such persons cannot be sentenced to banishment from the district or from the British territories; but this does not prohibit the discharge of such persons on their voluntary offer or consent to quit the jurisdiction, 2677.

Suspicious assemblies of strangers.

As subjects of foreign states assuming fictitious characters have assembled in the British territories to commit robberies or other crimes, these rules are enacted, 2678.
Police darogahs to detain all persons travelling in bodies or assembled under such suspicious circumstances, and to report to the magistrate, or to forward the suspected persons in emergent cases, 2679.
If the darogah does not see sufficient cause to detain them or to send them to the magistrate, but still entertains suspicions, he is to depute a police officer to watch them and to notify the same to the adjoining police division, 2680.
When forwarded to the magistrate, he is to release them, or to adopt precautionary measures as above; or if they appear to be travelling without any reasonable object, and to be inhabitants of a remote district or subjects of a foreign state, he is to compel them to return under a suitable guard, 2681.
Darogahs not to confound with such persons strangers coming for the purpose of cultivating land or exercising their professions; but are to encourage such persons, keeping a watchful eye over them if necessary, 2682—all such accessions to the population are to be reported to the magistrate, *id.*

VAGRANTS.—*Continued.*

Suspicious assemblies of strangers.—Continued.

The principal persons in the villages are required to give information of the resort to or passage through their villages of any considerable body of strangers, or of the assemblage of such bodies, with other particulars, 1860—penalty in cases of neglect, *id.*

VAKEEL.

Of civil court, suspected of presenting a forged deed and of subornation of perjury, 3332.
See MOKHTARS AND AGENTS.

VENUE. See JURISDICTION.

VERNACULAR GAZETTES.

Public notifications of general importance to be published in, 1391.

VEXATIOUS COMPLAINTS. See COMPLAINTS.

WAGERS.

All wagers are null and void, 2628*a*.

WAGES.

Of servants, suits to recover. See SERVANTS.
Police officers are not to interfere with or without the magistrate's order to procure payment of the wages of village chokeedars, 1644

WANT.

How far it excuses crime, 93, 93*n*.

WARD.

Female minor, clandestine marriage of, not criminally punishable, 3407.

WARDS OF CITY. See POLICE OFFICERS, *establishments.*

WARDS OF JAIL. See JAIL.

WARRANT.

When to be issued.

Upon a complaint being preferred in writing to a magistrate of an offence declared not bailable, or such as to require the immediate apprehension of the accused, he is, on the truth of the charge being deposed to, to issue a warrant for the apprehension of the accused, 231—form Appendix A, 1.
The magistrate may authorize the officer serving the warrant to receive bail with or without security; and is to specify the amounts in the warrant, 232—form Appendix A, 2.
The attendance and deposition of the plaintiff is not indispensable; it is sufficient if his written plaint is presented by an authorized agent, and corroborated by the oath of one or more persons present, or otherwise personally informed of the truth of it, 233—but substantial reason must be shown for the absence of the prosecutor, 234.
No warrant is to be issued unless the complainant or some other credible person deposes on oath to the truth of the charge, 235—and until the magistrate has examined the prosecutor as to the specific facts of the case, 236.
But magistrate may issue warrant upon the report of a police officer or upon any other credible information, without a written complaint or a deposition on oath, 235, 235*a*—form of warrant in such case, Appendix A, 22¼.
Session judge cannot prohibit the issue of a process to apprehend a released convict or other particular individual, 237.
If the magistrate distrust the truth of the complaint, he may postpone issuing his warrant until he has made enquiry, 238.
In bailable offences, warrant may be issued in cases of persons neglecting summons, 240—or in case of failure to serve summons, Appendix A, 29.
Police officers authorized to receive complaints, on a complaint of a heinous crime being preferred to them in writing, or on the receipt of credible information, and on the truth

WARRANT.—*Continued.*

When to be issued.—Continued.

of the complaint being deposed to on oath by the complainant or other credible person acquainted with the facts, are to examine the party regarding the circumstances, and to issue a warrant, unless special reason appears why the issue should be delayed pending a report to the magistrate, 253.

Police officers may issue warrant in case of neglect of summons, 252.

How to be issued. See PROCESSES, *warrant.*

For execution of sentence. See JAIL.

WATCHMEN. See CHOKEEDARS, and PRIVATE WATCHMEN.

WATER

Disputes regarding possession or use of. See DISPOSSESSION and USE OF LAND AND WATER.

WEEKS.

Allowed for official acts, mode of calculating, 1378.

WEIGHTS.

Magistrate may punish as for a fraud persons using weights and measures short of the current standard of the place or district, 3207.

The magistrate cannot prescribe a current standard, *id.*

The magistrate is annually to examine and seal the weights and scales used in the opium ware-houses for weighing the opium received from the ryots, 2539—the agents or their officers using weights or scales not so sealed are liable to fine by the magistrate, *id*

WELLS.

Magistrate may compel the owners of wells adjacent to any public thoroughfares to fence them in in such manner as to prevent danger, 2457.

Police officers to ascertain from time to time the state of public wells without proprietors, and to report when they are insecure with a statement of the expense required to make them secure, 2463—if the expense exceeds 50 rupees the magistrate must obtain the previous sanction of the superintendent, 2463.

WHIPPING. See CORPORAL PUNISHMENT.

WIFE. See HUSBAND

WINDOWS.

Who is to be answerable for the glass windows in the cutcherry, 1346.

The mode of dealing with persons breaking panes is left to the discretion of the superintending officer, *id*

Glass is not to be used in the windows and doors of civil buildings nearer the floor than 3½ or 4 feet, *id.*

WITCHCRAFT.

The putting any person to death on the ground of his or her being versed in or practising sorcery, is punishable as murder, 2888.

If any persons form themselves into an assembly for the purpose of trying any man or woman on a charge of witchcraft, or any other charge, or cause such assembly to be held, and any person is in consequence put to death, they are to be considered as principals or accomplices in the murder, *id.*

Precedents:—where the prisoners were actuated by superstition, 2933—where the deceased professed witchcraft, *id.*

WITNESSES.

All criminal courts are to issue a summons to the witnesses whose attendance and evidence is required, specifying at whose request the summons is issued, and requiring them to appear on a certain day, 306.

All summonses to witnesses are to be served by a chuprassee, peon, or other officer of the magistrate, or a police officer, instead of being delivered to the parties to be served on their own witnesses, *id*

WITNESSES.—*Continued.*

Non-attendance and recusance.

The power of imprisoning and fining any material witness not attending after receiving the summons, or though attending refusing to give evidence or sign his deposition, is vested in the magistrates, session courts, and the nizamut adawlut, 307.

Witness attending and refusing to give evidence is in the first instance to be committed to custody only; and to be fined if he persists in his refusal when called upon a second time, commutable to imprisonment for a certain period, or until he pays the fine, or consents to give his evidence, *id.*—no limitation is fixed for the imprisonment in lieu of fine, 311—if the case is decided, the witness must be discharged on payment of the fine; if not decided, he is to be kept in confinement whether he has paid the fine or not, *id.*

If a witness duly summoned does not attend, proof must be taken on oath that his evidence is material, 308—the prosecutor's oath alone is not sufficient, *id.*—such proof is not requisite if the witness attending refuses to give evidence or to sign his deposition, *id.*

Magistrate may compel the attendance of any witness, although he has not been named by the prosecutor or other person, 309.

When a witness duly summoned has failed in attendance, and has evaded the warrant issued for his apprehension, a proclamation is to be issued requiring his attendance within a certain period, in failure of which a fine is to be imposed, and his property attached and sold, 310.

Unless the summons has been actually and personally served on the witness, he cannot be fined, or a warrant issued for his apprehension, or his property attached, *id.*

All fines imposed by the magistrate under these rules are to be reported to the session judge; who is to report to the nizamut adawlut if the fine is immoderate or has been imposed on insufficient grounds, 312. See APPEALS.

Magistrates are to prevent any abuses on the part of the amlah, as confining witnesses in the hajut-guard, 313.

Witnesses should not be placed in confinement when they will not tell all they know, 314

Mohajuns may be required to produce their books in evidence, when an inspection of them is necessary; and if they refuse or neglect to produce them, and fail to assign satisfactory cause, they may be proceeded against as recusant witnesses, 315.

In the absence of any witness the session judge may twice postpone a trial; but if the evidence of such witness is unnecessary the trial may be completed in his absence, 316—after being twice postponed, the prisoners should be acquitted, if the witnesses are not forthcoming, 317—but the trial need not be postponed if witness is confined for refusing to give evidence, 318. See POSTPONED TRIALS.

Before courts martial See MILITARY COURTS

In cases committed to the sessions.

Magistrates to be careful that recognizances are not taken from such witnesses for the prosecution as appear to have no knowledge of the case, 319—such recognizances to be for a specific sum, 262, 1160. See BAIL.

Only two witnesses to the sooruthal need be bound over to give evidence at the sessions; as the judge can always summon others if necessary, 653.

Prisoner committed for trial is to be allowed to specify any witnesses whom he desires to have examined in his defence before the sessions court, 320—such witnesses are to be summoned to attend at the time fixed for the trial, 321

Any other witnesses also whom the defendant may name, at any time before the sessions, are to be summoned to attend at the same time, 322.

Magistrate is to submit with the proceedings lists of witnesses named by the prosecutor or prisoner, specifying those in

WITNESSES.—*Continued.*

In cases committed to the sessions.—Continued.

attendance and those absent with the cause of their non-attendance, 323—these lists are to be accompanied with the original returns of the nazir and of the person deputed by him to serve the summons; and these officers are to be kept in attendance on the sessions court, *id*—judge is to satisfy himself that all due measures have been taken to cause the attendance of the whole of the witnesses, *id.*—and to issue such orders as appear calculated to secure their appearance if the prisoners are still desirous of having their evidence taken, 324.

Magistrate to ascertain the actual attendance of the witnesses at the sessions court, and to establish checks to guard against overcharge for diet-money, 339—so, also the session judge is to note what witnesses are present, 340

If the witnesses are Mahomedan or Hindoo women of a rank which prevents their appearance in public, and if their evidence can be taken by commission, the judge is to depute persons for that purpose, 325.

Session judge to note in the English calendar what witnesses have been examined on the trial; and to add a memorandum of the names of all witnesses, not named in the magistrate's calendar, whom the judge has thought proper to summon and examine, 959

If law officer rejects, 872. See SENTENCES BY SESSION JUDGE

See SESSIONS.

Evidence of absent witnesses.

Generally the examination of absent witnesses cannot be received on a criminal trial, and their personal attendance is necessary, 326

Evidence of witnesses for the prosecution must be taken in the presence of the accused, 327

But evidence taken on oath before the magistrate, duly attested and proved, is available at the sessions in case of the death or unavoidable absence of the witness, 328

When the evidence of a prisoner confined in another district is requisite, the magistrate of such district may be required to send him, both courts reporting to the nizamut adawlut, 336.

Commission for taking evidence may be issued to any officer of the court, or other person within the jurisdiction of the court; or to any subordinate court for witnesses within the jurisdiction, or to any other court for examination of witnesses in any place without the jurisdiction, and in such case the evidence is to be taken in open court, 329—under special circumstances such commission may be issued otherwise than to a court out of the jurisdiction, *id.*

If within the jurisdiction, the attendance of any witness may be required at the court or at his own residence or elsewhere, 330.

Persons guilty of wilful disobedience are punishable as recusant witnesses in other cases, *id.*

Persons so attending are entitled to re-imbursement of expenses as in other cases, *id.*

Such examinations are to be taken on oath or affirmation; and false evidence or procuring such amounts to perjury or subornation, 331

Court to satisfy itself with the reason alleged for the non-attendance of the witness, and to enquire as to his place of residence and the nearest court thereto, and the commission is to be directed to such court of equal or inferior degree as can most conveniently execute it, except in case of doubt when it is to be directed to the judge who may direct it to a subordinate court, 332

Deposition so taken is not to be received in evidence without the consent of the opposite party, unless deponent is beyond the jurisdiction, or dead, or sick or infirm, or distant more than 50 koss, or exempted from personal appearance; or unless the court dispenses with the proof of such circumstances, or authorizes it notwithstanding proof that such causes have ceased, 332—and court may admit such deposition although the witness has been produced, *id.*—if deposition is duly certified, proof of the signature of such certificate is unnecessary, *id*

Such commissions may be executed within the limits of the supreme court, and are to be directed to a court of requests, 333.

May be executed also in foreign territories; and persons in the service of the Company are punishable for disobedience and perjury, 334.

Disobedience of orders of court executing commission is punishable by such court, 335.

Diet-money to indigent. See SUBSISTENCE ALLOWANCE

Detention of.

Magistrates to prevent prolonged detention, 348.

Diary to be kept in prescribed form, *id.* Appendix B, 13

Police.

Subpœnas to be drawn out in prescribed form, 349, Appendix A, 15

To be served by a single burkundaz and never to be delivered to parties or their agents, *id.*

Mochulkas to be taken from prosecutors and witnesses to appear before the magistrate on a certain day, which is to be the same day as that on which the accused will appear, 350—mochulkas to be taken on plain paper, 351—and forwarded to magistrate, 350—and a despatch to be given to the witnesses in prescribed form, which they are to deliver to the magistrate, *id.*—no police officer is to accompany them, *id.*

Witnesses are not to be subjected to any restraint or unnecessary inconvenience, nor to be required to give security for appearance, 353.

If a witness refuse to attend, or to execute the mochulka, he may be forwarded in custody, *id.*

Any maltreatment inflicted upon a witness by a police officer, landholder, or other person, to procure information, subjects to exemplary punishment, 354.

Police officers cannot compel the attendance of persons acquainted with the commission of offences, 355.

Examination of. See EVIDENCE, *rules for examination.*

See OATH.

WOMEN.

See ABDUCTION, and HUSBANDS.

In jail: to be prevented from having any communication with the male prisoners, 2048—not to be subjected to fetters except in special cases, 2084—not to be subjected to stripes, 2107, 2240.

Police officers are prohibited from keeping any register of females retained for the purposes of prostitution, or allowing any list of such girls to be delivered to, or the girls to be brought before them at any place whatever, 1706—case of attempt to sell girls for the purposes of prostitution, 2986.

WORKMEN.

Engaging to serve for a stipulated term, or contracting for the performance of any specific work, and wilfully quitting the service or neglecting the work, punishable by imprisonment for one month, 3409.

Magistrate may also compel the completion of the term or contract by further imprisonment for two months, *id.*—but this punishment cannot be repeated, or any further measure taken towards compelling an actual performance of the work engaged for, 3411.

But the workman is not liable to punishment in such cases, if he has been ill-treated, or has other sufficient cause to justify or excuse him, 3420.

In the case of artisans taking advances, there must be stipulated term, or a contract for a specific work, 3412.

WORKMEN.—*Continued.*

Cases may be prosecuted in the district where the agreement was executed, or in that in which the defendant resides, *id.*

These rules do not apply to the wages of a mokhtar, 3413—nor to the gomashtah of an indigo planter superintending an out-factory, 3414—nor to contracts for supplying hackeries and bullocks, 3415—nor to a contract with security to convey goods to a fixed place, 3417—but they are applicable to a driver of a hackery, who neglects or refuses to fulfil his engagement, 3415.

If employed for a fixed term or a specific service, they may not be discharged before the expiry of the term, or the completion of the service, 3418—in such cases magistrate is to award payment of such sum as appears fully adequate to any loss sustained by them from being discharged before the time agreed upon, 3419—but if discharged for misconduct, they can only recover arrears of wages, 3420.

Complaints for arrears of wages must be made within a year and preferred on oath, 3421.

Any amount of wages not exceeding arrears for one year may be recovered, 3422.

Such awards to be levied by distress and sale of personal property, 3423.

Beoparees in the service of government suing for arrears of wages to be referred to the civil courts, 3416.

Assistants vested with special powers are competent to dispose of such cases, 3424—and such cases may be referred to officers exercising the primary powers of an assistant for investigation and report, *id.*

Cases decided by the criminal authorities are not open to a civil action; nor can the civil court interfere with the magistrate's order, 3425.

WORKMEN.—*Continued.*

European British subjects may sue under those provisions, but are not liable as defendants, 3426.

WORKS, PUBLIC. See PUBLIC WORKS.

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WRECKS.

Plunder of a stranded vessel by the crew, who broke open the box of a passenger, held to be theft, 3128

Case of plundering a stranded boat, 3130

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YEAR.

Mode of calculating period of, allowed for official acts, 1378

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Search of, in execution of process of arrest. See PROCESSES, *warrant.*

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Search of, in searching for stolen property. See STOLEN PROPERTY.

Search of, in searching for unlicensed stills or the produce of such stills, or illicit opium, or salt. See OFFENCES AGAINST GOVERNMENT.

ZINA. See FIUL-I-SHUNEEA AND ZINA.

ZUMEENDARS. See LANDHOLDERS.

ZUMEENDAREE DAWK. See DAWK.

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